

The Gazette of India



EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

PUBLISHED BY AUTHORITY

No. 220] NEW DELHI, SATURDAY, OCTOBER 25, 1958/KARTIKA 2, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 9th October 1958

S.O. 2224.—Whereas the election of Shri Vishambar Dayal and Shrimati Ganga Devi as members of the House of the People from the Unnao constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shrimati Krishna Kumari, wife of Shri Piare Lall, resident of 91/2, Civil Lines, Unnao, District Unnao, Uttar Pradesh;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ONE MEMBER ELECTION TRIBUNAL CONSISTING OF
SRI K. C. PURI, DISTRICT JUDGE, UNNAO

ELECTION PETITION No. 477 OF 1957

Smt. Krishna Kumari Vs. Sri Vishambhar Dayal and others.

JUDGMENT

This election petition has been preferred by Smt. Krishna Kumari who was a candidate for the Lok Sabha from No. 361 Unnao Double Member Parliamentary Constituency seeking that the election of respondents Nos. 1 and 2, namely, Sri Vishambhar Dayal and Smt. Ganga Devi as members from the said constituency be declared void and that the petitioner having secured the next largest number of votes for the reserved seat be declared to have been duly elected to the said seat as a member of the Lok Sabha.

The petitioner has come up with the allegations that four candidates, namely, Sri Vishambhar Dayal (respondent No. 1), Smt. Ganga Devi (respondent No. 2), Sri Tribhuwan Singh (respondent No. 3) and Smt. Krishna Kumari (the petitioner) were the contesting candidates to the said election; that the said respondents 1 and 2 were the official candidates of the congress Party while the respondent No. 3 and the petitioner were the official candidates of the Praja Socialist Party; that Smt. Ganga Devi and Smt. Krishna Kumari were the candidates

for the reserved seat for scheduled caste, while respondents 1 and 3 were the candidates for the general seat; that the polling in the said constituency took place on the 25th and 28th February, 1957 and on 3rd, 6th and 9th March, 1957 and the counting of votes was conducted at Lucknow on the 13th and 14th March 1957 and on the 21st, 22nd and 23rd March 1957 at Unnao; that the result of the said elections was declared on the 27th March 1957 wherein Sri Vishambhar Dayal had secured 1,73,684 votes, Smt. Ganga Devi 1,62,211, Sri Tribhuwan Singh 1,59,093 and Smt. Krishna Kumari 1,53,119 votes respectively and thus the respondents 1 and 2 were declared duly elected to the general and reserved seats respectively.

The petitioner further claims in her petition that the respondents 1 and 2 being official Congress candidates were carrying on their election propaganda jointly.

The election of respondents Nos. 1 and 2 to the aforesaid seats is challenged by the petitioner on various grounds. It is urged that the said respondents and their agents and workers committed corrupt practices as defined under section 123 of the Representation of People Act. In this connection it was given out by the petitioner that pamphlets containing false statements which the said respondents and authors of the said pamphlets believed to be false and did not believe the same to be true and which pertained to the personal character and conduct of the petitioner and related to her candidature were issued and distributed. The pamphlets marked Exs. 1 and 2 were said to contain in them false statements to the effect that Smt. Krishna Kumari had been turned out of the Congress as she had initially asked for a Congress ticket for the aforesaid seat and had signed the pledge that if the said ticket were not given to her then too she would not stand as a rival candidate against the Congress nominee and that having failed to get the said ticket she had yet stood up as a rival candidate and had thus committed a breach of the aforesaid undertaking and consequently she had been turned out of the Congress. She was dubbed as an opportunist and untrustworthy person on the aforesaid account in the said leaflets. The petitioner denied that she had ever been a congressite or had applied as above for the said ticket. Similarly leaflet Ex. 3 was also alleged to contain a false statement about its issuer Smt. Janki Devi being the President of the Scheduled Caste Federation U.P. Through the said leaflet a systematic appeal was said to have been made to the voters on the basis of caste and community with a view to unduly influence the voters. Same was claimed to be the case with regard to leaflet Ex. 4 said to have been issued by Smt. Janki Devi. It was further alleged that through leaflets Exs. 5 and 6 appeals on the basis of caste and community had been made to the Yadavs.

It was also alleged by the petitioner that certain voters were threatened to vote for respondents 1 and 2 and thus undue influence had been exercised in securing votes. A pamphlet Ex. 7 was said to have been issued in favour of respondents 1 and 2 by some persons including one Chiranjee Lal who was said to be an official of the Excise Department. It was also claimed that the respondents 1 and 2 had promised to their workers that Smt. Ganga Devi would get them employed through her brother Sri Girdhari Lal a Minister in the U.P. Cabinet and thus undue influence was said to have been exercised. Government officers were claimed to have exercised undue influence upon voters by actively working for respondents 1 and 2 and by persuading the voters to refrain from voting for the petitioner.

The said election was further challenged on account of alleged non-compliance of the provisions of the Representation of People Act and the rules made thereunder. In this connection it was claimed that at some places a large number of voters who had reached polling station in time were not allowed to cast their votes. It was also given out that at some polling stations there were certain defects with the ballot boxes and the same had resulted in the tampering of the said boxes, one of the ballot boxes was said to contain acid resulting in the destruction of the ballots contained therein. The said box was claimed to belong to the petitioner. In another box some ballot papers of different polling centres were found. It was also urged that ballot boxes were of a type which could be easily opened. Another allegation was to the effect that the agents of the petitioner had not been allowed to place their seals on the lids of the boxes. The room where ballot boxes had been stored was claimed to have not been duly sealed, nor were the boxes allowed to be checked by the petitioner and her agents and the tampering of the ballot boxes in the store rooms was said to have been made. It was alleged that the ventilators of the store rooms had not been properly closed.

It was also urged that with regard to one polling station re-polling had been ordered without giving sufficient publicity to the said matter and even the petitioner had not been given sufficient notice on re-poll. Another defect relied upon by the petitioner was that the date and time of counting had been changed without previous notice to the petitioner. The arrangement of the tables on which the ballot boxes were opened and counted was also claimed to be defective.

It was also alleged that no proper verification of the accounts of ballot papers had been made by the Returning Officer.

Another irregularity alleged to by the petitioner in connection with the counting of ballots was that the lights had gone off on the petitioner's tables during the course of the counting and yet the counting had gone on and in that confusion ballot papers could not be duly guarded and as a result thereof the respondents Nos. 1 and 2 got a lead of fifteen hundred votes.

The respondents Nos. 1 and 2 had controverted in toto the allegations of the petitioner about any corrupt practices having been committed or any undue influence having been exercised or any services of Government officials having been seemed or any irregularities alleged to by the petitioner having been effected in the course of the elections or in the matter of counting. It was also alleged that no leaflets containing false statements were issued, nor had any systematic appeal been made on the basis of caste and community by the respondents Nos. 1 and 2 or their workers. It was claimed that the petitioner had herself applied for a congress ticket both for the seat in the State Legislature and for a seat in the Lok Sabha and that her name had been duly proposed. The petitioner was said to have given an undertaking to the Congress, as has been mentioned above, and after final rejection of her name the petitioner was said to have submitted her resignation from Congress on 27th January, 1957. It was alleged that the petitioner was wrongly alleging that she had not given any undertaking as referred to above and that it was incorrect that she was never a member of the Congress. The issuing of leaflet Ex. 1 was admitted but its distribution by respondents Nos. 1 and 2 was denied, nor was it admitted by the said respondents that the said document contained in it a false statement. The issue of pamphlet Ex. 4 was admitted by the said respondent but it was denied that the same had been distributed or that it contained a systematic appeal on the basis of caste and community. Similarly the issue of leaflet Ex. 5 by Sri Ram Adhin Singh was admitted but its distribution was denied and it was also denied that through it a systematic appeal on the basis of caste and community had been made. With regard to the issue of the other leaflets want of knowledge of the same had been expressed by the said respondents. It was alleged that even if any leaflets had been issued or distributed then the same were not so done with the knowledge, consent or connivance of the said respondents.

It had been denied that any tampering of boxes had been effected, nor was it admitted that there had been any irregularities in the matter of counting of ballots as referred to above.

It had also been urged by the said respondents that certain paras of the petition were vague and needed to be struck off. The verification of the petition was also challenged to be improper. The respondent No. 3 Sri Tribhuwan Singh had not filed any written statement. He had been proceeded against *ex parte* at one stage but later he sought that he may be permitted to participate in the proceedings of the petition and that he would not file any written statement and he was accordingly allowed to do so.

On 5th August, 1957 the respondents Nos. 1 and 2 had filed an application seeking the striking off of certain paragraphs of the election petition on account of their vagueness etc. and they had further sought that when the said application had been disposed of then the said respondents be allowed to file their written statements. On 19th August, 1957 the petitioner was ordered to strike off certain portions from the election petition and accordingly she had amended the election petition by striking off certain portions out of the same. It was thereafter that the respondents 1 and 2 had filed their written statements referred to above.

The petitioner had filed a writ petition before Hon'ble the High Court against the aforesaid order of striking off certain portions from the said petition and a stay order had been received from Hon'ble the High Court on 24th September, 1957 and the stay continued on till 14th March, 1958 when a further order was received from Hon'ble the High Court dismissing the writ petition and vacating the stay order.

The under-mentioned issues had been framed on the pleadings of the aforesaid parties:—

Issues—

1. Whether the respondents Nos 1 and 2 were joint and did they make a common cause in this election. If so, its effect?

2. Whether Sri Parmeshwar Din Varma and Sri Sheo Gopal Tewari Independent candidates for Uttar Pradesh Legislative Assembly from Purwa and Safipur constituencies were also active supporters of respondents Nos. 1 and 2 and were they the agents of the said respondents for the purposes of this election. If so, with what effect?

3. Whether the pamphlets embodied in paras 7(a) and 7(b) of the election petition and marked Nos. I and II respectively had been issued and distributed by the persons named therein and as to whether they contained false statements of fact which the respondents believed to be false or did not believe to be true in relation to the personal character of the petitioner and in relation to the petitioner's candidature and as to whether the said pamphlets charged the petitioner with improper conduct and prejudiced her cause in the election. If so, its effect?

4. Whether the pamphlets embodied in 7(c), 7(d), 7(f) and 7(g) and marked III, IV, V and VI had been issued, published and distributed as alleged in the aforesaid sub-paras and as to whether they contained systematic appeals on grounds of caste and community and thereby undue influence was exercised upon the voters and if so, its effect?

5. Whether the aforesaid pamphlets or any of them had been issued, published and distributed by the persons named in the aforesaid sub-paras with the knowledge, connivance or support of the respondents Nos. 1 and 2 and whether the same was done to improve the prospects of respondents' election and to prejudice the cause of the petitioner?

6. Whether the persons named in the aforesaid sub-paras of para 7 as the persons issuing, distributing and publishing the said pamphlets were the workers or the agents of the respondents 1 and 2?

7. Whether Mahadeo Prasad Tewari was an active supporter of respondents 1 and 2 and whether Mahadeo Prasad Tewari exercised his influence along with Kankan Singh on Munna Pasi, Buddha Pasi and Dori Chamar as mentioned in 7(h) of the election petition and did the said persons offer threats to the aforesaid persons. If so, its effect?

8. Whether the pamphlet marked No. VII embodied in para 7(i) was published as alleged in the aforesaid para and as to whether the same was signed along with others by Sri Chiranjil Lal Excise Officer and as to whether the same was distributed by Sri Chiranjil Lal and other persons embodied in the said sub-para and whether Sri Chiranjil Lal was an Excise Officer and as to whether the other persons named therein who were said to have distributed the pamphlets were the workers of the respondents 1 and 2. If the said allegations are decided in the affirmative the effect thereof?

9. Whether the respondents Nos. 1 and 2 offered assurances and promises to the persons named in para 7(k) as alleged therein and whether the persons named therein were the workers of the said respondents. If the said allegations are decided in the affirmative, the effect thereof?

10. Whether the officers embodied in paras 7(p)(i), 7(p)(ii), 7(p)(iii) and 7(p)(viii) actively canvassed and/or did active propaganda for the respondents Nos. 1 and 2 and/or actively worked for the said respondents as alleged therein and whether the said persons were Government Officers as contemplated by the Representation of People Act. If the aforesaid allegations are decided in the affirmative, the effect thereof?

11. Whether Sri Brij Kishore was the Agent of the respondents Nos. 1 and 2 as alleged in 7(p)(ii). If so, its effect?

12. Whether Sri Sahib Lal was the counting agent on behalf of respondents Nos. 1 and 2 and was present in the counting booth as alleged in 7(p)(viii). If so, its effect?

13. Whether the officers mentioned in 7(q)(viii) and 7(q)(xiv) were the officers as contemplated by the Representation of People Act and whether Sri Ganga Sewak Bajpai and Sri Balram served as Polling Agents as alleged in the aforesaid sub-para and as to whether they took active part in the election propaganda of respondents Nos. 1 and 2 as alleged in the aforesaid sub-para. If so, its effect?

14. Whether a large number of voters as alleged in para 8(a) were not allowed to cast their votes as alleged therein. If so, its effect?

15. Whether at Intgaon Polling Centre voting was suspended altogether at 12 A.M. on account of threat, violence and riot by workers of respondents Nos. 1 and 2. If so, its effect?

16. Whether at Mustafabad Polling Station a person was arrested on the report of Sri Shitla Prasad and as a result thereof the voters became panic struck and ran away without voting. If so, its effect?

17. Whether communal tension prevailed at Moradabad as alleged in para 8(a) and whether the same affected the voting as alleged in the said sub-para. If so, its effect?

18. Whether on 22-3-57 the ballot box of Safipur Polling Centre of Sri Tribhuvan Singh respondent No. 3 contained no symbol inside the box and whether any objection to that effect was made. If so, its effect?

19. Whether the ballot box as mentioned in 8(c) was found broken as alleged in the said sub-para and the outer symbols of the petitioner and the respondent No. 3 were separated therefrom and no symbol was found inside the box itself and whether a small number label which was fixed on the outer side of the lid was found inside the box. If so, its effect?

20. Whether the ballot box No. 68 of the petitioner and the ballot box 82/1 of the petitioner had been tampered with as alleged in para 8(d) and 8(e) and whether they were found in the conditions as incorporated in the aforesaid sub-para. If so, its effect?

21. Whether in the ballot box No. 93/3 of respondent No. 1 some ballot papers of different polling centres were found inside the same. If so, its effect?

22. Whether the ballot No. 155/4 could be opened without disturbing the seal and that the lid came out itself when the box was lifted without breaking the seal. If so, its effect?

23. Whether the ballot box embodied in para 8(h) was found tampered with and damaged and found in a condition alleged therein. If so, its effect?

24. Whether the U.P. type of ballot boxes were used in the election and whether they were defective as alleged in 8(i) and whether the said defects had not been removed and as to whether the said boxes could easily be opened as alleged in the said sub-para. If so, its effect?

25. Whether the Agents of the petitioner on almost all the Polling Centres wanted to put their seals under the lid and were not allowed to do so and as to whether the non-observance of the Law as alleged in 8(j) was effected. If so, its effect?

26. Whether the room where the ballot boxes were deposited was not properly sealed and whether the said room was found in the condition as alleged in 8(k) and as to whether the ballot boxes were brought to the storage room very late in the night and as to whether the petitioner's agents were not allowed to check the room or to supervise the storing of the ballot boxes and as to whether any tampering of ballot boxes was done as alleged in the said sub-para? If so, its effect?

27. Whether the doors, the ventilators etc. as alleged in 8(l) of the storage room were not duly sealed. If so, its effect?

28. Whether the petitioner was not given sufficient notice of the re-polling which took place as alleged in para 8(m) and whether sufficient publicity to the same was not given. If so, its effect?

29. Whether the petitioner sought for the re-polling as alleged in para 8(m), if so, whether the same was not allowed and if the finding thereto is in the affirmative, the effect thereof?

30. Whether the irregularities alleged in paragraph 8(n) were committed. If so, its effect?

31. Whether there was no proper verification of the account of ballot papers by the Returning Officer and whether the petitioner's Agents were not permitted to check the verification of accounts of ballot papers. If so, its effect?

32. Whether the counting took place in the dim light as alleged in 8(q). If so, its effect, and as to whether the darkness set in and created confusion and the ballot papers could not properly be guarded and whether as a result of the said darkness the respondents Nos. 1 and 2 got a lead of about 1500 votes. If so, its effect?

33. Whether the petition is not properly verified and if so is it liable to be rejected on that ground?

34. To what remedies, if any, is the petitioner entitled?

Before coming to deal with the various issues it appears essential to disclose some important dates on which the various incidents pertaining to the election in question took place. The last date for filing nomination papers was 29th of January 1957 and the date for the scrutiny was 4-2-57. The withdrawal of nominations was to be effected by 7-2-57. On 25-2-57 polling took place in the Hasanganj area and on 28-2-57 the polling took place at Unnao while on 3-3-57 the polling took place in Purwa South Mohan Lal Ganj and in a part of Lucknow and on 6-3-57 the polling was held at Purwa North, Malhiabad and a part of Lucknow and on 9-3-57 the polling was held at Safipur. On the 13th and 14th March 1957 the counting of votes took place at Lucknow and at Unnao the counting took place on 21st to 23rd March, 1957 and again on 27th March, 1957. Re-polling took place on 27th March 1957 at Faridipur Polling Centre and the counting pertaining thereto took place on that very day. The result of the said election was declared on 27-3-57 and the present election petition was filed on 11-5-57.

As mentioned heretofore there were four candidates in the contest of the election in question. They were Smt. Krishna Kumari petitioner for the reserved seat, Smt. Ganga Devi respondent for the reserved seat, Sri Vishambhar Dayal Tripathi and Sri Tribhuwan Singh respondents for the general seat. It has already been shown above that Smt. Krishna Kumari and Sri Tribhuwan Singh had lost in the contest. The number of votes secured by each of the said candidates respectively have been detailed heretofore. Sri Vishambhar Dayal Tripathi had secured 20,565 votes more than the votes secured by the petitioner and Smt. Ganga Devi had secured 9,092 votes more than the petitioner. Sri Tribhuwan Singh who was the other defeated candidate had been supporting the cause of the petitioner as a respondent. He had failed to file any written statement and yet had produced two witnesses who did endorse the allegations advanced by the petitioner. Sri Tribhuwan Singh himself did not step in the witness-box nor was he ever present but two D.Ws. had been produced by him to support the cause of the petitioner. It may be mentioned here that after having produced the said two D.Ws. who are D.Ws. 1 and 2 the said respondent ceased to have any interest in the petition and was later absent from the proceedings and was proceeded against *ex-parte*. Thus except for having ushered in two D.Ws. to support the cause of the petitioner the said respondent, namely, Sri Tribhuwan Singh had done nothing else in the said proceedings. On behalf of the petitioner sixty-two witnesses in all had been produced and as many as 137 documents had been relied upon. It may be specified here that some of the documents produced by the petitioner had to be exhibited as the same had been admitted to by the respondent No. 3 Sri Tribhuwan Singh or else the allegations embodied in the said documents had not been deposed to by any of the witnesses. The effect of want of any evidence having been produced by the petitioner or the respondent No. 3 to substantiate the allegations embodied in the documents of the aforesaid type shall be assessed later when the said documents shall be dealt with. The respondent No. 3 as mentioned heretofore produced two D.Ws. who are D.Ws. 1 and 2 while the respondents 1 and 2 produced twenty-two witnesses who are D.Ws. 3 to 24. The respondents 1 and 2 had produced twenty-five documents in all.

Broadly speaking the petitioner's case can be divided under four heads as under:—

- (a) Illegalities and irregularities committed in connection with the pollings and the counting of votes.

- (b) Distribution of leaflets containing false statements of facts.
- (c) Distribution of leaflets containing propaganda on the basis of caste and community.
- (d) Securing the services of a certain Government Officer by the respondents 1 and 2 to do their election propaganda. Inter alia it is claimed by the petitioner that the respondents 1 and 2 had been carrying on their election propaganda jointly.

After having given above the synopsis of the case now I come down to discuss the various issues framed in this case.

As many as thirty-four issues cropped up from the pleadings. At the stage of the arguments the learned counsel for the petitioner gave up the issues Nos. 2, 7, 10, 11, 12, 13, 14, 15, 16, 17, 24 and 25. The said issues are consequently decided against the petitioner.

With regard to the issue No. 33 also the learned counsel for the petitioner had nothing to urge. Consequently the same is also decided against the petitioner.

The issues Nos. 18 to 32 pertain to the alleged irregularities in the polling and in the counting of votes and the evidence led by the parties with regard to the said issues is so inter-connected and interwoven that the discussion with regard to some of the said issues has got to be made together. Out of the said issues the issues Nos. 24 and 25 have already been held above in the negative against the petitioner as the same have been given up by the petitioner. So the remaining issues now form the subject matter of discussion. The said issues pertain to the allegations embodied in para 8 of the election petition. The witnesses whose evidence merits consideration with regard to the said issues are P.W. 22 Jan Dayal, P.W. 38 Ziauddin, P.W. 39 Sadiq Husain, P.W. 58 Sri Bhatnagar P.W. 53 Sri V. N. Kapoor and P.W. 62 the petitioner.

Issue No. 18 pertains to the allegation contained in para 8(b) of the election petition which is to the effect that on 22-3-57 the ballot box of Safipur polling station of Sri Tribhuwan Singh respondent No. 3 contained no symbol inside the box and an objection to this effect was made. In spite of the fact that the aforementioned witnesses had been produced by the petitioner and the respondent No. 3 had also been helping the petitioner in the matter of election petition yet none of the said witnesses, nor even the petitioner who claimed to have been in attendance on the counting premises at Unnao deposed to the aforesaid allegation. Reliance was however placed on an application Ex. 113 submitted by Sri Tribhuwan Singh to the Returning Officer Unnao on 21-3-57. Sri Tribhuwan Singh has also not stepped in the witness-box to vouchsafe to the allegations embodied in the said application. As mentioned heretofore the counting at Unnao took place on 21st, 22nd and 23rd March 1957. The aforesaid application which bears the date 21st of March 1957 could not pertain to an occurrence of 22-3-57. The date put in by the respondent No. 3 on the said application is 21-3-57 and the order of the District Magistrate who was the Returning Officer is also dated 21-3-57, consequently the said application could not pertain to the allegation embodied in para 8(b) of the election petition. Another document relied upon by the petitioner in that respect is Ex. 18 which is a complaint made by Smt. Krishna Kumari through Sri S. N. Seth, Advocate, to the Returning Officer embodying therein several allegations pertaining to the irregularities in the counting and one of the said allegations is that a box alleged to be of Sri Tribhuwan Singh contained no label inside the box and objection was made on the 22nd of March 1957 as pointed out earlier. Sri Seth has not stepped in the witness-box nor has Smt. Krishna Kumari deposed to the said incident and so far as the submission of the objection is concerned the same pertained to an alleged incident dated 21st of March 1957 and not to any incident of the 22nd of March 1957. Thus the said allegation stands unsubstantiated. Issue No. 18 is consequently decided against the petitioner.

Issue No. 19.—It is alleged that ballot box No. 29/1 belonging to the petitioner in Hasanganj Polling Centre was found broken and the lid was separated from the box and the outer symbols were both of the petitioner and the respondent No. 3 and no symbol was found inside the box itself and the small label, i.e., number label which is fixed on the outer lid of the box was found inside the box. In this respect reliance was placed upon a complaint Ex. 70 submitted by Jan Dayal who was the counting agent of Smt. Krishna Kumari to the Returning Officer. On the said application there is an endorsement of the Returning Officer to the effect that the inner labels of the box as also the identity chit of the boxes of the candidate fixed the identity of boxes without doubt and the box which had been handed over to the counting assistant of the first row for polling station

No. 29 was that of Smt. Krishna Kumari and that it seemed that the other label was peeled off in transit and that the Presiding Officer pasted label against them without looking minutely to the box and as the identity of the boxes was established beyond doubt the said objection was ordered to be filed. This was the document of the petitioner herself containing the aforesaid order of the Returning Officer which showed that there was no defect in fixing up the identity of the said box. Though Smt. Krishna Kumari had produced Sri Bhatnagar Assistant Returning Officer as a witness yet she had not ventured to produce the Returning Officer as her witness and it would appear from the non-production of the Returning Officer by the petitioner as a witness that she apprehended that the evidence of the said Returning Officer would not lend any support to her cause and would rather undermine the same. In Rule 57 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1956 it is laid down in the proviso that if there is no symbol inside the box or if the same symbol is found inside two or more boxes used at the same polling station then the Returning Officer shall, whenever possible, decide the question by reference to all relevant circumstances including the identifying marks of any of the component parts or attachments of the ballot box and where he does not find it possible to decide the question, he shall immediately refer it to the Election Commission for its directions. The Returning Officer in the present case had acted within the provisions laid down in the aforesaid rule and had then determined after inspecting the boxes of Smt. Krishna Kumari and Sri Tribhuwan Singh and after making inquiry into the said allegations that the said boxes were in tact when they had been opened and that the identity of the said boxes could be fixed without any doubt. When we find from the aforesaid document of the petitioner herself that the Returning Officer having acted within the aforesaid powers had determined that the identity of the said box had been duly fixed after making an inquiry even about the non-breaking of the said boxes then there remains no force in the said allegation. However, when we further scrutinise the matter then too we find that there is no force in the aforesaid allegation. P.W. 2 Jan Dayal who had submitted the said complaint himself gave out an altogether different statement from the one embodied in his aforesaid complaint. In the complaint it had been given out that the upper lid was separate from the box and the outer labels fixed were of Tribhuwan Singh and Krishna Kumari and the inner label had no name on the paper. As against the said allegation the said witness deposed that one of the boxes contained labels of two candidates Smt. Krishna Kumari and Sri Tribhuwan Singh inside the said box and on the said box there was no label of any candidate. Thus it would appear that though in his complaint he had given out that on the said box two outer labels of the two candidates had been found yet in his statement he deposed that on the said box there was no label of any candidate and inside the said box were the labels of two candidates. These statements, one embodied in the complaint and the other deposed to by the said witness are absolutely at conflict. It is further significant to note that this witness who was the author of the said complaint had not the courage to depose that the lid of the said box was found separate from it. When this principal witness of the said allegation is not prepared to depose to the said circumstance then there remains no doubt about the allegation of the said lid being separated having been unfounded. With regard to the other part of the allegation it has already been observed above that the aforesaid endorsement of the Returning Officer itself shows that the identity of the said box could easily be fixed up. The other witness of the petitioner who deposed to the alleged irregularities in the counting is P.W. 38 Ziauddin whose evidence shall be discussed by me in detail a little later gave out in a vague way that lids of some boxes were found broken without giving any specification of the same. Sri Kapoor who was a counting agent of Sri Tribhuwan Singh gave out that on one of the boxes there was the symbol of Sri Tribhuwan Singh and on its other side was the symbol of Smt. Krishna Kumari and inside it no symbol was pasted. Though he deposed to the want of a lid on another box yet he too did not depose to the lid having been separated from the box in question. Thus so far as the allegation about the said box having been found broken is concerned there is no evidence about the same and with regard to the other allegation, namely, about there having been two outer labels on the said box it is to be found that the author of the said complaint himself took a somersault on the said point and again the force of the said contention is lost when we come to the aforesaid endorsement of the Returning Officer about the identity of the said box having been easily fixed up and having thus caused no detriment to the petitioner. The said issue too is consequently decided against the petitioner.

Issue No. 20.—It covers the allegations embodied in para 8(d) and 8(e) of the petition. In 8(d) the allegation is to the effect that in ballot box No. 68 of the petitioner ballot papers were found under the lid over the seal and that the said circumstance establishes that the ballot box had been tampered with and the allegation embodied in 8(e) is that in box No. 82/1 of the petitioner acid

was discovered at the time of counting and it was apparent that the same had been poured in the box in large quantity and that a Dona was also found inside the box and the ballot papers in this box were found burnt and disfigured and could not be counted and from this circumstance too it was sought to be inferred that the ballot boxes had been tampered with. I shall at first deal with the allegation embodied in para 8(d) of the petition as above. With regard to the said allegation embodied in para 8(d) also the petitioner relies upon a complaint dated 23-3-57 made by P.W. Jan Dayal to the Returning Officer which is contained in Ex. 69. On the said document there is the order of the Returning Officer that the said two ballot papers which had been found as above would be kept along with the other rejected ballot papers. From the contents of the said complaint itself it is obvious that the author of the said complaint had found that the said two ballot papers were spare ballot papers. It is contended on behalf of the petitioner that the existence of the said ballot papers on the said box leads to the conclusion that tampering of boxes had taken place. If we scrutinise the evidence of the witnesses who deposed to the said allegation we would find that the question of tampering with the box in question would not at all arise from the presence of the said two spare ballot papers on the said box. P.W. 22 Sri Jan Dayal claimed that when the said box was being carried to the counting table and when it had passed by his side then he had perceived that the said two ballot papers were there on the slit of the said box. If that were the position then the question of tampering with the box would not arise. He was positive that he had pointed out to the Returning Officer before the said box had been opened that the said two ballot papers were there in the slit. As against the aforesaid position the statement of P.W. 38 Ziauddin is to the effect that the fact about the existence of the said two ballots sticking to the slit of the box came to his knowledge when the said box was opened. He was quite clear in his statement when he gave out that he would see the boxes very intently before the same were opened and so would his other colleagues do as they had become very careful on account of the past experience. That being so if the said two ballots had been sticking on to the said slit as was deposed to by Jan Dayal to be perceived on a glance outwardly when the box was being carried away by the side of Jan Dayal then there could be no reason for Ziauddin to fail to detect the existence of the said ballots, before the box was opened, more particularly, when he according to himself would perceive intently the said boxes before they were opened. Even according to P.W. Sri Kapoor the said two ballots were found sticking on to the lid on the inner side. If that were so the principal witness Mr. Jan Dayal could not at all have seen the said ballot papers till the said box was opened and more particularly in a situation when the said box just passed by his side. These conflicts in the statements of the said witnesses would show that no one is sure about the exact position in which the said two ballot papers which even according to the complaint were spare, were found on the said box. No inference can be consequently drawn from the discovery of the said two ballot papers that the said box had been tampered with. Since the said two ballot papers were spare ones and their numbers were not known the Returning Officer could reject the same under Rule 57 of the aforesaid Rules and he had accordingly done so. No irregularity or illegality had thus come into being by the recovery of the said two ballot papers nor would the said circumstance lead to the conclusion that any tampering had taken place. Thus the said allegation stands unsubstantiated and the issue no. 20 so far as the said allegation is concerned is decided in the negative.

Coming to the allegation embodied in para 8(e) of the petition it is alleged by the petitioner that in box No. 82/1 acid and a Dona had been found as above. On this point the petitioner places reliance upon Ex. 68 which is a complaint lodged by Jan Dayal on 23rd of March 1957 before the Returning Officer. In the said complaint the allegation is confined only to the presence of some acid inside the said box which had completely disfigured and destroyed the ballot papers inside the said box. No allegation with regard to the recovery of a Dona was contained in the said complaint. Again, it is to be observed that in para 8(e) of the petition it has been alleged that acid was poured in the box in large quantity whereas in the said complaint it had been disclosed that some acid was found in the said box. On the aforesaid complaint the Returning Officer passed an order to the effect that the polling at the polling station to which the said box pertained was declared void and a reference had been made to the Election Commission with regard to the said circumstance. Since the ballot papers found inside the said box were not capable of being counted consequently the Returning Officer could declare the polling of that particular station as void and then to refer the matter to the Election Commission for directions for the re-polling qua the said polling station. The Returning Officer had accordingly informed

the Election Commission about the said circumstance and a repolling had been ordered. The respondents 1 and 2 pleaded with regard to the said allegation that it was incorrect that any acid was thrown or was found inside the ballot box and added that the ballot papers contained in the said box were lumped together on account of the presence of some gum or sticking paste and that as repolling of the said centre had taken place, consequently the said objection was baseless. The statement of Shri Bhatnagar Assistant Returning Officer (P. W. 52) also shows that some acidic thing had been recovered from the said box lying in a Dona and the ballot papers in that box had become decomposed. In the examination-in-chief conducted by the petitioner herself the said witness had deposed that he had conducted an inquiry into that matter and the Presiding Officer of the polling station in question pleaded ignorance about the way in which the said Dona had come into the said box. It is significant to observe that the petitioner had cited Shri Jado Prakash the Presiding Officer of the said Polling Station as a witness but had eventually given him up and had merely relied upon Ex. 77/P. W. 52 a statement which was said to have been made by the said Presiding Officer before the aforesaid Assistant Returning Officer. This indirect way of producing the testimony of the said Presiding Officer is unwarranted. The petitioner ought to have summoned and produced the said Presiding Officer as a witness and should have allowed an opportunity to the opposite side to cross-examine him to test out his veracity but the petitioner did not adopt the direct way of leading evidence on the said point by producing Shri Jado Prakash as a witness and merely relied upon a statement which was said to have been made by him in an inquiry. By not producing the said Presiding Officer as a witness the petitioner has rendered herself liable to an adverse presumption to be drawn on the point in question. If the petitioner had produced the said Presiding Officer as a witness then some light could have been thrown on the point in issue. No polling agent of the petitioner attached to the said polling centre came forth to depose as to what was the condition of the said box when it had been initially sealed. It is quite probable that some sort of gum or paste or some other sticky thing which may have the appearance of some thing acidic may have inadvertently remained in the said box when it had initially been closed and sealed. The presence of the said articles inside the said box do not essentially lead to the conclusion that there had been any tampering with the said box after the polling and before the counting. I have already mentioned above that according to P. W. 38 Ziauddin who was also there in the counting on behalf of the petitioner they would carefully and intently look to the condition of the said boxes before the same were opened. None of the witnesses deposed that the said box was found in a broken condition or in any such condition wherefrom it could be inferred that it had been tampered with. It had not even been alleged to in the petition that the said box had been found in a broken condition. There is thus no proof that the said box had been tampered with after the polling and before the counting.

It was urged on behalf of the petitioner that right from the start till the last the authorities had been conducting themselves in a way that the petitioner could conclude from their conduct that something had been done by them to tamper with the boxes. Reliance is placed upon the various allegations embodied in paras 8(f) to 8(q) of the petition in that respect. The said allegations form part of the issues No. 21 to 32. Since the said allegations are allied with the question about the effect of the recovery of the said acid and Dona in the aforesaid box consequently before arriving at the effect of the existence of the said commodity in the said box it appears appropriate to discuss the evidence pertaining to the other issues as well so that all the said issues may be determined together. It is claimed on behalf of the petitioner that initially the counting of ballot papers had been fixed for 22nd March 1957 to 29th March 1957 as is evidenced by Ex. 23 at Unnao and that later *vide* notice contained in Ex. 22 the said dates were changed to 22nd of March 1957 to 28th of March 1957 and that the place of counting shown in Ex. 22 was the one situated in front of the District Election Office Unnao and it had been given therein that twelve ballot boxes of every candidate will be counted simultaneously on separate tables and that the maximum number of counting agents that a candidate will be able to appoint will be 12. In the present case there were four contesting candidates and as such according to the said notice forty-eight boxes would be dealt with simultaneously at one time and forty-eight agents would be there to look after the same. Earlier when the counting was notified to take place from the 22nd of March 1957 to 29th of March 1957 it had been intimated to the candidates concerned *vide* Ex. 21 that there will be twenty counting tables for each candidate. On 14th of March 1957 it had been notified that the counting at Unnao would take place on 21st March 1957 at 3 P.M. in front of the District Election Office at Unnao. Later *vide* notice Ex. 74/P.W. 52 dated 20th March 1957 it was notified that the said counting will

be held on March 21st 1957 at 11 A.M. instead of 3 P.M. The petitioner claims in para 8(n) of the petition that she had not received any notice with regard to the counting to take place from 21st of March 1957 at 11 A.M. and that it was consequently impossible for her to arrange for counting agents to properly supervise the counting on 26 tables on the 21st of March and that consequently the counting was unjust and inaccurate and was in contravention of the rules. In the course of her deposition she gave out that she did not receive any notice from the authorities about the counting to take place on the 21st of March 1957 and added that on 20th March 1957 she had gone to the place of Shri Triloki Singh who was the Leader of the P.S.P. and the latter had told her that the counting in connection with her election was to take place at Unnao on 21st March, 1957. She went on to say that on receiving the said information from Shri Triloki Singh on the evening of the 20th March 1957 she requested Shri Triloki Singh to make arrangements for the counting agents for the counting to take place on 21st March 1957 and consequently he arranged for the counting agents from Lucknow to attend the counting on the 21st of March, 1957 at Unnao. According to her, she had herself been attending the counting premises on all the three days of the counting from the 21st of March, 1957 to 23rd of March, 1957. When we come to the statement of P. W. 38 Ziauddin then we find that the claim of the petitioner about her having learnt for the first time from Shri Triloki Singh that the counting would take place at Unnao on the 21st March, 1957 is belied, in as much as, Ziauddin claims that Shrimati Krishna Kumari was there at the premises of Shri Triloki Singh in the presence of the said witness and had given out that she had had no information from the authorities about the counting to take place on the 21st but some other person had told her that it would take place on the 21st instead of 22nd. It would thus appear that whereas Shrimati Krishna Kumari claims that at the premises of Shri Triloki Singh it was the latter who communicated the said information to her, her witness Ziauddin gives out that it was Shrimati Krishna Kumari who divulged the said news there by saying that she had learnt from some person that the counting would take place as above. As against the said statement the other witness of the petitioner Shri Bhatnagar deposed that intimation of the aforesaid change had been sent to each candidate and to its respective party office individually and that it was on the 14th of March, 1957, that notices had been issued as above for the counting to take place on the 21st of March, 1957. He further deposed that the number of boxes which had been announced to be opened for counting on the 22nd was revised and the number of boxes to be opened for counting from 21 was increased with the approval of the Election Commission and intimation of that change was sent to the candidates individually. He admitted that on 21st of March, 1957 twenty-six boxes were opened and counted in one round. So from the statement of the said P. W. coupled with the aforesaid documents it is obvious that on the 14th of March, 1957 it had been notified that the counting would take place at Unnao from 21st of March, 1957. It is again obvious that Smt. Krishna Kumari was aware of the fact at any rate by the 20th of March, 1957 that the counting would take place at Unnao on the 21st of March, 1957. She had attended, according to her, the said counting on the 21st of March, 1957 along with twelve counting agents. It may be mentioned here that the other candidates too had been permitted to have twelve counting agents each on the counting premises so the petitioner had not been handicapped in any way nor were the other candidates in any position of preference over the petitioner. According to rule 54 of the aforesaid rules the number of counting agents cannot exceed twelve for each candidate. It was urged on behalf of the petitioner that twelve counting agents could not effectively look after twenty-six boxes at a time. In the said rules it has not been specified as to how many boxes of a particular candidate can be opened at one time. Again, it is not the boxes of an individual candidate which are opened at a particular time but the boxes of all the contesting candidates are opened simultaneously in a particular number. The strength of twelve counting agents for each candidate appears to have been fixed to look to the boxes when they are brought on the tables before they are opened and then to keep a watch over the proper conduct of the counting. When a maximum number of counting agents is fixed by the aforesaid rules then the said number could not be made to exceed. When every candidate had only twelve counting agents at the said premises then no one was to suffer thereby. As mentioned above, the twelve counting agents of Smt. Krishna Kumari were there in the said counting consequently the change in the dates of counting had in no way adversely affected her. She was in the know of the said change atleast by the 20th of March 1957 and had arranged for the requisite number of counting agents for the said day. From the statement of the Assistant Returning Officer who was produced by the petitioner herself it is further obvious that the number of ballot boxes to be opened was increased from twelve to twenty-six with the permission of the Election Commission probably with a view to expedite

the result of the counting. There does not appear any malafides on the part of the counting authorities in that respect. Thus this circumstance which was sought to be utilised by the petitioner for inferring that inaccurate counting had taken place is unfounded, more particularly, when we find according to the statement of P. W. Ziauddin that they would always look to the boxes brought on the counting tables intently before they were opened to ascertain that they were in a sound condition. The petitioner's counting agents like the counting agents of the other candidates had equal and adequate opportunities to supervise the said counting. No written complaint had ever been submitted by the petitioner to the Returning Officer about her not having received any intimation with regard to the change in the said date. The net result is that the change in the said dates had in no way adversely affected the cause of the petitioner nor did it exhibit any malafides on the part of the authorities conducting the counting nor was any illegality or irregularity committed by the authorities in effecting the said change of dates or in increasing the ballot boxes to be counted on the dates in question. *These allegations are covered by Issue no. 30 which is decided against the petitioner pursuant to the aforesaid discussion.*

The next allegation made by the petitioner is to the effect that the room where the ballot boxes were deposited after the polling was not properly sealed and a ventilator of that room was found open and a rope was found hanging from the ventilator to the floor and the ballot boxes were brought to the storage room very late in the night and the petitioner's agents were neither allowed to check the room nor were they allowed to supervise the storage of the ballot boxes and that the opened ventilator was pointed out at the time of taking out all ballot boxes from the said room but no heed was paid to the objections and from this circumstance it was sought to be inferred that tampering of ballot boxes had been done inside the said room also. This allegation forms part of para 8(k) of the petition and is covered by ISSUE NO. 26. When we come to the actual evidence on the said point then we find that Smt. Krishna Kumari did not herself make any reference to the said allegation. P.W. 38 Ziauddin who too had attended to the said counting on all the three days did not depose to the said allegation. Same is the case with the evidence of P.W. 39 Sajid Husain. The only witness who deposed to the said allegation is P.W. 22 Jan Dayal who gave out that the store room wherein the boxes had been stored had been shown to them before it had been opened and when the said room was opened then he had observed that one of its ventilators was in an open condition and its string was dangling up to the ground. He, however, conceded that the lock of the door of the said room had a seal on it when they had gone there. Though this witness would submit application after application complaining against the little flaws which he would detect in the process of counting yet no complaint had been made by him about his having found the ventilator in the aforesaid condition. On this point too Sri Bhatnagar P.W. 52 deposed that the doors of the storegodown where the ballot boxes were put were closed after placing the ballot boxes therein and except the main door all the other doors were locked and sealed from inside and the main door was locked and sealed from outside and the candidates were also asked to affix their seals on the said lock if they desired to do so. With regard to the ventilators the witness added that they were placed in such a position that they may not be disturbed in any way from outside. He stated further that on the day when the said godown was opened then no one had objected that one of the sky lights was in an open condition. According to him guards had been posted on the said store rooms and another batch of guards would escort the boxes when the same would be brought from the said rooms to the counting tables. He further deposed that the candidates were at liberty to ask their representatives to escort the boxes when the same were taken from the said rooms to the counting tables. There does not appear any reason to give preference to the statement of Jan Dayal over the statement of the Assistant Returning Officer who too was a witness of the petitioner, more particularly, when we find that Jan Dayal had not submitted any objection in writing in that respect. From the statement of the Assistant Returning Officer it is obvious that all the precautions of safety of the said boxes had been adopted including the closure of the ventilators and that no complaint whatsoever had been made to him in that respect. It was urged on behalf of the petitioner that the polling at Hasanganj took place on 25th February, 1957 and the boxes of that centre were brought in the aforesaid store room by the 26th of February 1957 and yet no intimation had been given to the petitioner asking her to place her own locks on the store room. In this connection reliance was placed on Ex. 19 which is a copy of the radiogram dated February 26, 1957 from the Chief Electoral Officer to Government to all the District Officers Uttar Pradesh wherein it was laid down that where there is time lag of more than three days between the completion of poll and counting the Returning Officers may be advised to invite candidates or their election agents to put their own locks on door of room or building in which ballot boxes had

been stored. It was contended that it was on 27th of February 1957 that an intimation pursuant to the aforesaid radiogram was communicated to the petitioner by the Assistant Returning Officer and that prior to the said date no intimation of the aforesaid nature had been given to the petitioner. Sri Bhatnagar deposed that on the receipt of the aforesaid radiogram he had himself communicated its contents to the petitioner. He did not however remember it at any time prior to the receipt of the said radiogram a similar notice had or had not been issued to the petitioner or to any other candidate. According to Section 100 (d) (iv) of the Representation of the People Act it is the non-compliance with the provisions of the Constitution or of the said Act or of any rules or orders made under the said Act which would enable the Tribunal to declare the election void provided the said non-compliance has materially affected the result of election. In this case the only order which has been proved by the petitioner to have been issued for asking the petitioner to place locks on the said room is the one embodied in the said radiogram and the moment the same was received by the authorities at Unnao the same was communicated to the petitioner. No other order has been shown to have been issued prior to the said radiogram on the said lines and as such the question of its breach would not arise. Rule 35 of the Rules referred to above lays down that all the ballot boxes shall after the counting be sealed and secured and Rule 38 lays down that the same shall be kept in safe custody until the commencement of the counting of votes. According to the statement of Sri Bhatnagar it is obvious that all due precautions had been taken up for keeping the said boxes in safe custody and as no order prior to the receipt of the said radiogram had been made by the Election Commission in that respect, consequently no communication similar to the one embodied in the said radiogram may have been made to the parties concerned and if no such steps had earlier been taken then it cannot be held that there was any non-compliance of any rule or order. It is there in the statement of Smt. Krishna Kumari that on the receipt of the said information about the option having been given to her to place her locks on the said store she had not done so. Her explanation for not doing so was that she had confidence that the Government Officers would do their duty properly and also because the voting at Hasanganj had taken place on the 25th February 1957 and the boxes of that centre had been received long before 28th February, 1957 and if any tampering was to be done with the said boxes then the same might have been done by then. That explanation would not lead us anywhere in view of the unambiguous statement of Sri Bhatnagar who had taken all due precautions for the safety of the said boxes. The petitioner has nowhere alleged muchless proved that the tampering had taken place at any time before 28th February, 1957. Under these circumstances, the petitioner has failed to prove that the said boxes had not been kept in safe custody. There is no evidence to substantiate that the petitioner's agents had not been allowed to check the room in question or were not allowed to supervise the storing of the ballot boxes. Vague allegations on surmises had been made in the petition by the petitioner with regard to the various incidents and eventually when the matter came to the procuring of evidence the petitioner failed to lead any evidence and had to give up many an issue. Thus the allegations embodied in para 8(k) of the petition remained unsubstantiated and the issue No. 26 is consequently *decided against the petitioner.*

Issue No. 27.—The allegation pertaining to the said issue had already been dealt with by me above while discussing issue No. 26 above. It has already been held that the petitioner has failed to substantiate that the store rooms where the boxes were kept had not been properly locked and sealed. It has further been determined above that there was no defect with the ventilators of the said rooms. The moment the Election Commission had directed that the candidates may also be asked to place their locks or seals if they so desired on the said rooms then a communication to that effect had been made to the candidates including Smt. Krishna Kumari who had of her own accord not placed any locks or seals on the said rooms. In view of the discussion made above in connection with the issue No. 26, no further discussion is needed on this issue *which is also decided against the petitioner.*

Issues Nos. 21, 22 and 23.—All these three issues pertain to the alleged tampering of certain boxes containing ballot papers. I had observed earlier that the evidence with regard to the alleged irregularities committed by the authorities with regard to the polling and the counting is common with regard to most of the issues pertaining thereto and it comprises of only six P.Ws. whose names have been detailed earlier. Out of the said witnesses Sri Bhatnagar is an Assistant Returning Officer while the other witness is the petitioner herself. The remaining four witnesses were Jan Dayal, Ziauddin, Said Husain and Sri V. N. Kapoor. It would be worthwhile mentioning here that all these four witnesses are highly interested

witnesses. P.W. 22 Jan Dayal is a person who described himself as a Neta and who was not sure about his political leanings. At one stage he gave out that he was not in any political party and yet he took a somersault and added that he was in the P.S.P. in 1957. Again, he added that in the General Elections in 1957 he has assisted the Congress candidates in the District Unnao. He went further and deposed that a few days before the polling he had ceased to work for the congress. Then we find him working as a Counting Agent on behalf of Smt. Krishna Kumari on all the three days of the counting. According to him, on the 21st of March 1957 the counting took place in the open Maidan of the Collectorate when thirteen tables of each candidate were placed on the right side of the Returning Officer in his front and thirteen tables of each candidate were placed to the left hand side of the Returning Officer in his front. He claimed that on the first day of the counting he had inspected some of the boxes brought on the table to check up their seals while he had not inspected the other boxes. I have already observed above that his own colleague Ziauddin deposed that from the past experience the said workers of Smt. Krishna Kumari had become careful and as such they would intently look to all the boxes when they were brought on the tables before the same were opened. Jan Sayal went on to depose that on the 22nd the counting took place in the verandah of the Collectorate courts and on that day the table of the District Magistrate who was the Returning Officer was in the middle of the verandah and on its right were the tables meant for the boxes of the two P.S.P. candidates while on its left were the tables meant for the Congress candidates. He added that on the said date the rows of the tables had not been formed in the alphabetical order of the names of the candidates as had been done on the 21st. He described that there was a *Qanat* wall below the said verandah on one side to ward off the outsiders inlet to the counting premises and on the other side of the verandah was the wall of the rooms. I shall later discuss the significance of this admission of this witness when dealing with the question of the light having extinguished when the counting was on on the said date. He had added that the lights had gone off on the said date when the ballot papers were still lying on the tables and the said electric lights remained off for about an hour or so and during this interval counting went on in the light of the candles which had been sent for and thereafter the gas light had been provided and then the electric light was also restored. He went on to say that during that interval some persons had stepped down the verandah to smoke but they remained within the enclosed premises. This part of the statement of the said witness too shall be appreciated when dealing with the question of the light referred to above. According to him, on the 23rd the counting took place in the Maidan and the arrangement of the tables was the same as was on the 21st. It was on this day that a number of objections most of which have been dealt with earlier, had been raised by him in writing. One of the said objections pertained to the discovery of a Dona and an acidic thing in a box. The other objection pertained to the existence of two ballot papers in the slit of box and the third objection in writing submitted by him pertained to the presence of two labels of Smt. Krishna Kumari and Tribhuwan Singh inside the said box and no outer label having been there on the said box. I have already discussed above that on this point the deposition of the said witness was at conflict with the contents of the objection submitted by him. It has further been discussed above that his theory about the presence of the two ballot papers on the outer side of a box and perceived by him when the said box passed by him had been belied by other witnesses. When such is the nature of evidence of a particular witness his testimony cannot be easily relied upon. Even with regard to the Dona in question no mention had been made by him of the same in his written application. I have given the details of the statement of this witness with a view to show that though he was the Election Agent of Smt. Krishna Kumari and he was the person through whom the other workers of Smt. Krishna Kumari were required to submit their objections yet he had not submitted any other objection besides those referred to above and it is here that the said omission assumes significance when we come to deal with the allegations covered by issues nos. 21, 22 and 23. The allegation covered by issue no. 21 pertains to para 8(f) of the election petition which is to the effect that in ballot box No. 93/3 of respondent No. 1 some ballot papers of different polling centres were found inside the same. It was a serious allegation and yet Jan Dayal did not at all depose to the same. P.W. 38 Ziauddin had also not deposed to the said allegation although he had deposed to various other allegations. It may be mentioned at this stage that this witness is presently a clerk in the Sales Tax Office at Gonda and before joining the service on 27th May 1957 he was a member of the P.S.P. and in the elections in question had done propaganda work on behalf of the P.S.P. candidates. This witness had been sought to be utilised by the petitioner for proving allegations of every

nature right from the distribution of leaflets to the counting. He was a Polling Agent for Smt. Krishna Kumari at Sasapur and again claimed that he was a Counting Agent at Unnao on all the said three dates. His interest in the affairs of the petitioner is obvious. He had deposed to the Dona and the Acid having been recovered in a box and having seen the top *Dhakkans* of two or three boxes broken up and two ballots having been found spare on the slit of another box. This is the witness who had deposed that when the boxes would be brought on the tables then all the twelve counting agents of their party would collect at the said tables by the boxes and he would see the boxes very intently before the same were opened and so would his other colleagues do as they had become very careful on account of the past experience. Thus it would appear that the claim of Jan Dayal that some of the boxes would be seen before being opened and the others would not be seen is incorrect. Again, from the statement of this witness it is obvious that all the boxes before opening would be carefully seen by the twelve agents of Smt. Krishna Kumari and the plea about the insufficiency of the number of the agents thus falls through. This witness had added that he suspected the malafides of the counting clerks when they walked out of the counting premises during the intervals when the electric light was off and yet he had not given any written objection about the said fact to the Returning Officer though he claimed to have complained to his Election Agent Jan Dayal. It may be mentioned here that even Jan Dayal had not submitted any objection in that respect to the authorities. Reverting back to the issues in question it may be mentioned that even this witness had not deposed with regard to the allegation covered by issue no. 21. P.W. 39 Sajid Husain who too is a member of the P.S.P. and who was a counting agent of Smt. Krishna Kumari also did not depose to the said allegation. Although he claimed that he had worked as a counting agent on the 22nd and 23rd March 1957 for Smt. Krishna Kumari yet he had merely deposed to the allegation about the recovery of the Dona and the Acid and with regard to some boxes the seals having been found broken. According to this witness, when the lights had gone off on the 22nd then no counting went on during the dark interval and when the candles were brought then the counting recommenced. This witness also added that the counting clerks would go out just to make water and would then come back. All these points would be appreciated later while dealing with the point of light. It may, however, be mentioned here that this witness gave out that he did not suspect any malafides on the part of the clerks who would go out as above and thereby contradicted the statement of the earlier witness. This witness also confirmed that when the boxes would be brought on the tables then all of them would go there to the tables and would verify if they were in order. This witness ousts the presence of Smt. Krishna Kumari on the counting premises on the 22nd and 23rd, in as much as, he gave out that on the said two dates except for Jai Pal and Tribhuwan Singh he did not see any other candidates at the counting premises. Thus the claim of Smt. Krishna Kumari about her having been there on the said premises on the 22nd and 23rd is belied by the statement of this witness. This witness too did not depose to the allegation pertaining to the issue No. 21. P.W. 53 Sri Kapoor who is a local Lawyer and who was at one time the counsel of Smt. Krishna Kumari in this petition and who later stepped in as a witness for the said petitioner and who had been the counting agent of Sri Tribhuwan Singh the other P.S.P. candidate on the counting premises also deposed to several allegations and yet he also did not give out anything with regard to the allegation in question. This witness is also interested in the P.S.P. as he had also fought a Municipal Election on the P.S.P. Ticket. This witness in his zeal to support the cause of the P.S.P. candidates went on to depose that the counting agents were not permitted to look at the boxes when the same were brought. This statement of the said witness is totally belied by the evidence of Ziauddin and Sajid Husain. When such is the state of evidence produced by the petitioner then no implicit reliance can be placed on it. Then comes the statement of the petitioner herself. She had also not deposed to the allegation covered by issue No. 21. She claimed that she had attended the counting premises on all the three days and yet her own witness Sajid Husain falsifies her on that point. Then comes the last witness of the petitioner on the point of the said allegation and he is Sri Bhatnagar. He too was not questioned on the aforesaid allegation. Thus it would appear that none of the witnesses deposed to the allegation covered by issue No. 21. Reliance was placed on a report contained in Ex. 82/P.W. 53 which is signed by Sri S. N. Seth Advocate for Smt. Krishna Kumari. Sri Seth has not stepped in the witness-box to vouchsafe to the said allegation. Again, it is to be noted that in the said application it was the box No. 92/3 in which ballot papers of different numbers than the numbers issued at the polling station were said to have been issued and now the petitioner

in the petition attributes that thing to ballot box No. 93/3. There is no allegation whatsoever in the petition with regard to box No. 92/3. Thus on that ground alone the said issue has got to be decided against the petitioner. The entire evidence referred to above in no way substantiates that the aforesaid flaw had been found in the box No. 93/3. Thus issue No. 21 is decided against the petitioner.

The allegation covered by issue No. 22 pertains to para 8(g) of the petition which is to the effect that the ballot box No. 155/4 could be opened without disturbing the seal and the lid came out itself when the box was lifted without breaking the seal. It has already been observed above that Jan Dayal did not depose to the said allegation. He has not submitted any complaint as Election Agent on behalf of Smt. Krishna Kumari with regard to the alleged defect in the said box. Vague allegations with regard to some boxes having been found damaged were made by some of the witnesses whose evidence has been discussed heretofore, and who were not unanimous *inter se* about the said state of affairs, so much so, that one of them ousted the very presence of Smt. Krishna Kumari at the spot. Even in the complaint Ex. 82/P.W. 53 which was submitted on the 23rd of March 1957 by Sri Seth and Tribhuwan Singh, both of whom have not come in the witness-box, no allegation pertaining to this box had been made. Reliance was placed by the petitioner on a complaint Ex. 79/P.W. 53 submitted by Sri Kapoor, Election Agent of Sri Tribhuwan Singh pertaining to the said box. The said document which was filed by the petitioner contained an endorsement by the Returning Officer to the effect that the said box had been brought in a closed condition from the polling station to go down and from there to the counting table and that it had been handled by various persons in the above processes without the lid giving way and at the table while the seal of the seal cover was being opened with a lever wrench the push caused the lid to come off and that it appeared that the box had been lightly closed. It had been further noted down there that when the said box had been brought at the counting table then it was in a closed and sealed condition and consequently the possibility of its being tampered with was ruled out and it had then been directed by the Returning Officer that the ballot papers contained in the said box would be counted. It would thus appear that the aforesaid document of the petitioner herself belies her claim about there having been defect in the said box as alleged to by the petitioner. The endorsement of the Returning Officer clearly indicates that the said box when brought to the said table was in a closed and sealed condition. With regard to the testimony of Sri Kapoor I have already observed above that in his zeal to support the cause of the P.S.P. candidate for whom he had been a counsel at one stage and a witness at the other he went to the extent of deposing that except for the election agent no one was permitted to look at the boxes when they were brought on the counting tables before the same were opened and the counting agents were not permitted to look at them before they were opened and yet we find that the other witnesses totally contradict him on the said point by deposing that all the counting agents would assemble at the tables when the boxes would be brought and would look at them thoroughly before they were opened. Under these circumstances no reliance can be placed upon the testimony of Sri Kapoor on the point in issue, more particularly, when the endorsement on the said document of the petitioner also confirms that the said defect was not there before the box was opened. The other document relied upon by the petitioner in that respect is Ex. 80/P.W. 53 which is an application submitted by Sri Seth on behalf of Smt. Krishna Kumari and Sri Tribhuwan Singh. Both these persons *viz.* Sri Seth and Tribhuwan Singh have not come forth to depose to the allegations contained in the said complaint. It has already been observed above that the petitioner failed to summon the Returning Officer as a witness. She had in all probability purposely suppressed the production of Sri Srivastava the Returning Officer as she apprehended that his testimony would totally negative the aforesaid allegations of the petitioner. So far as the other evidence of the petitioner is concerned it has been discussed above that owing to the conflicting nature of the said evidence no reliance can be placed upon the same. It is contended on behalf of the respondents Nos. 1 and 2 that when the petitioner discovered on the 23rd of March 1957 that she was losing in the counting it was then that such applications were manipulated or else there was no truth in the allegations embodied in the said applications. The said allegation does not appear to be without force, in as much as, on the earlier day of the counting no such defect was said to have occurred. Smt. Krishna Kumari claimed that her election agent had submitted an application with regard to the

damage discovered in two or three boxes and yet we find that there is no complaint by her election agent Jan Dayal on the record to the said point. On the other hand, it was the Election Agent of Sri Tribhuwan Singh who had made the complaint in question. All these circumstances would show that, as a matter of fact, there was no basis for the said allegation and the same remains unproved. *Issue No. 22 is consequently decided against the petitioner.*

Coming to issue No. 23 we find that it pertains to the allegation embodied in para. 8(h) of the petition which is to the effect that box No. 185 of the respondent No. 3 was found tampered with and the outer seal was found damaged and the lid was also found open and the cover could be lifted without breaking the seal. At the outset, it may be mentioned that this allegation pertains to the box of Tribhuwan Singh and if this defect and similar other defects were found in the boxes of Sri Tribhuwan Singh then he would have stepped in the witness-box to vouchsafe to the same. Tribhuwan Singh produced two D.Ws. on his behalf and yet failed to produce any evidence in support of the said allegation nor did he himself come in the witness-box to vouchsafe to the same. Smt. Krishna Kumari did not produce Tribhuwan Singh as her witness to substantiate the said allegation. With regard to this allegation also reliance was placed upon the complaint Ex. 81/P.W. 53. The same as observed above is signed by Sri Seth and Sri Tribhuwan Singh, none of whom has stepped in the witness-box to depose to the said allegations. It is not conceivable that if the said flaws had been detected in the boxes belonging to Sri Tribhuwan Singh then he would keep mum over the said matter and would not avail of the present opportunity to step in the witness-box to lend support to Smt. Krishna Kumari, if the said allegation were true. Another document referred to by the counsel for the petitioner in this connection is Ex. 113. A reading of the said document discloses that the same does not pertain to the box in question and in the election petition there is no allegation with regard to the box referred to in the said application, consequently the said document is of no avail to the petitioner. Same is the case with regard to the paper Ex. 112. It may be added that both these documents are signed by Tribhuwan Singh who has not vouchsafed to the allegations embodied therein. The discussion which has been made with regard to the issue No. 22 applies equally to this issue as well. *Thus this issue No. 23 also stands unsubstantiated and is decided against the petitioner.*

Having dealt with the aforesaid issues which pertained to the alleged tampering with the boxes I now revert back to the issue No. 20 once again as the final finding thereof had been reserved earlier in view of the fact that the discussion with regard to the tampering of other boxes besides the box containing the Dona and the acid was also to be made to appreciate as to whether the Dona and the acid had gone in the said box after tampering with the same or as to whether the said articles had remained in the said box when the said box had initially been closed and sealed. It has been held above that all the allegations about the store room where the boxes were kept having not been properly locked, sealed and looked after are unfounded. Due precautions had been taken to keep the said boxes in tact in the said store room and to be escorted in safety to the counting tables. Every opportunity had been afforded to the petitioner and to the other candidates to look after the said store room and to the said boxes when in transit. They had further been afforded opportunities to look to the said boxes before they were opened for counting. No defects with the said boxes have been established by the petitioner. No tampering with the boxes has been substantiated. Under all these circumstances, the irresistible conclusion would be that the Dona and the acid had not gone in the box in question by any process of tampering with the same. The Returning Officer had declared void the polling of polling centre Faridipur and had moved the Election Commission for re-polling at the said centre. It was on the 23rd of March, 1957, that the said polling had been declared void. The re-polling took place at the said centre on the 27th of March, 1957, pursuant to the order of the Election Commission. With a view to assess the effect of the said repolling the matter has got to be dealt with under issue No. 28 and it is then that it can be found as to whether the presence of the Dona and the acid in the said box had materially affected the election or not.

Issue No. 28.—This issue pertains to the allegation embodied in para. 8(m) of the election petition wherein it is given out that sufficient publicity had not been made when the repolling took place and that the petitioner had not been given sufficient notice of the repolling and had been informed only a day earlier and it was also alleged that repoll of all the centres had not been ordered though asked for by the petitioner. From the statement of Sri Bhatnagar it is obvious that it was on the 23rd of March, 1957, that it had been announced that the repolling at Faridipur centre would take place and that the date of repolling would be

communicated later. This had been so done after the order of the Returning Officer had been passed declaring the polling at the said centre void. Thus the candidates did come to know on that very date that the repolling would take place on the said centre. Thereafter the Election Commission was apprised of the said order of the Returning Officer and on the 25th of March, 1957, a telegram Ex. 78/P.W. 52 was received by the Returning Officer from the Election Commission pursuant to the telegram of the Returning Officer dated 24th March, 1957, and pursuant to the telephonic conversation which the Returning Officer had with the Deputy Election Commissioner. Through the said telegram it was directed that fresh polls at the said centre be taken on the 27th March, 1957, between 8-30 A.M. and 4-30 P.M. and that the place, date and hours fixed for fresh poll shall be notified to the contesting candidates and in the election office and widely published by handbills, beat of drum or otherwise throughout the area covered by the aforesaid polling and that all the voters at the polling station shall be allowed to vote afresh. On that very day, i.e., on 25th March, 1957, the Returning Officer issued notice Ex. 75/P.W. 52 intimating all the contesting candidates and their agents that the repoll shall take place on the 27th March, 1957, between hours of 8-30 A.M. to 4-30 P.M. Sri Bhatnagar deposes that immediately on the receipt of the aforesaid telegram communication of the repoll was made to the candidates or their election agents and that the S.D.O. Hasanganj and Tahsildar Hasanganj were directed to announce in the centre of that polling station that the voters of that circle shall repoll their votes on the 27th of March, 1957, between 8-30 A.M. and 4-30 P.M. He added that so far as he recollected no notices were distributed about the repoll to take place. Smt. Krishna Kumari claimed that it was on the 26th of March, 1957, in the evening that she got the information of the authorities that the repolling would take place on the said station on the 27th March, 1957, and that on that evening she and Sri Seth had gone to the District Magistrate and had submitted a written objection about the late information about the repolling. No such written report to the Returning Officer has been summoned by the petitioner or produced by her. It would thus appear that she had had the information about the repolling to take place on the 27th by the 26th of March, 1957, pursuant to the aforesaid order of the Election Commission dated 25th of March, 1957. The other candidates too had received the said information at that very time and as such there was no particular reason for Smt. Krishna Kumari to suffer on that account. On the 23rd of March, 1957, every candidate had come to know that there would be repolling at the said centre and the only thing to be known thereafter was the particular date on which the repolling would take place. Thus they could have easily carried on their propaganda work in that centre after that date if so desired by them. It was urged that despite the fact that the Election Commission had directed that information about the repoll be conveyed through handbills yet no handbills had been issued and in this connection reliance was placed upon the statement of Sri Bhatnagar who had deposed that so far as he recollected no printed notices were distributed about the repoll to take place. The said telegraphic order prescribed different modes of publicity for example, by handbills, by beat of drum or otherwise and that being so if the mode about announcement by beat of drums had been adopted and no notices had even been issued yet there would be no breach of the said order as the said order did not enjoin that both the said modes were to be adopted essentially. The use of the word "otherwise" would denote that the Returning Officer had been given a wide discretion in adopting a mode for the said publicity. In this case the petitioner has not produced a single witness from that centre to depose that no publicity about the date of repolling had been given or that any particular voter had failed to cast his vote on account of his not having known about the date of repoll. If it was claimed that no publicity had been given about the said date then the petitioner was expected to produce evidence from the people of that centre to vouchsafe that they were not made aware of the date of repolling and it could then be assessed as to whether no publicity had been given. The petitioner's own witness Sri Bhatnagar deposes that arrangements had been made to announce the said date and that the said announcement had been duly made. The petitioner has failed to substantiate that no due publicity had been given. The petitioner banked upon the fact that at the said centre the number of voters was 1,066 out of which only 216 had polled their votes at the repolling and out of those 216 votes she had secured only nineteen votes and Tribhuwan Singh had secured only thirty votes. This data by itself would not lead to the conclusion that there had been no due publicity of the date of repolling. The petitioner has not shown as to how many votes had been polled on the earlier occasion at the said centre. In spite of the fact, that the ballot papers contained in the box in question were not capable of being counted yet the petitioner could very well have sent for the records to show as to how many votes had actually been polled at the said centre on the earlier occasion. If that date had been furnished then one could gather a certain idea about the difference of the votes at the repoll from those which had been

polled at the earlier occasion, but the petitioner kept back the said data. It cannot thus be inferred from the data furnished by the petitioner that there was lack of publicity with regard to the date of repolling. As mentioned above, she has not produced a single witness from that centre to vouchsafe to the lack of publicity. Another point from which the said matter may be looked to is that even if it be assumed for the sake of argument that there was some slackness in the publicity of the date of repolling then too the said defect does not materially affect the result of election in-as-much as, even if Smt. Krishna Kumari had secured the entire number of votes at the said centre which amounted to 1,066 then too she could not be a successful candidate, in-as-much as, she was defeated by Smt. Ganga Devi by 9000 votes and odd and by Sri Tripathi by near about 20,000 votes. *Thus issue No. 28 stands unsubstantiated and is determined against the petitioner.*

After having decided issue No. 28 against the petitioner the issue No. 20 has also got to be decided against the petitioner in-as-much as, despite the fact that the said dona and the acid had been recovered in box No. 82/1 yet the said recovery had not materially affected the cause of the petitioner, in-as-much as there had been a repolling pursuant to the order of the Election Commission and the said repolling had in no way materially effected the result of the election. It has already been held above that the said Dona and the acid had not gone in the said box by any process of tampering. There had been no allegation at all that the said box had been found in any damaged condition when brought for counting. *Issue No. 20 is, consequently decided against the petitioner.*

Issue No. 29.—This issue arises out of the allegation embodied in the latter part of para. 8(m) of the petition in which it is given out that the petitioner had applied to the Returning Officer requesting him to order repoll in all the polling centres or in Parliamentary constituency in Unnao District in view of general tampering of ballot boxes but the same was not done. Since it has been held above that no tampering of ballot boxes had taken place, consequently the question of repolling at all the polling centres or in Parliamentary Constituency at Unnao District did not arise and if the Returning Officer had not acceded to the said request of the petitioner then there was nothing wrong in it. *The said issue is, consequently, decided against the petitioner.*

Issue No. 31.—It is alleged that there was no proper verification of the account of ballot papers by the Returning Officer and the petitioner's agents were not permitted to check the verification of accounts of ballot papers. It has not at all been shown that there was no proper verification of the account of ballot papers by the Returning Officer and no evidence has been led to substantiate that the petitioner's agents had been stopped from checking the verification of accounts of ballot papers. *This issue is, consequently, decided against the petitioner.*

Issue No. 32.—In para 8(q) of the petition it is alleged that on 22nd March, 1957, while the counting was going on and the petitioner's ballot papers were there on the tables the electric light went off but even then the counting continued on in the dim light of the candles which were made available after a lapse of considerable time and this created confusion and the ballot papers could not be properly guarded and watched as a result of which the respondents Nos. 1 and 2 got a lead of about fifteen hundred votes. On the 22nd of March, 1957 the counting took place in the verandah of the Collectorate buildings. The said verandah is in the shape of "U" and the tables of all the candidates were lying in the said verandah. Admittedly, the tables of the P.S.P. candidates were lying on the right side of the table of the Returning Officer which was placed in the middle of the verandah and the tables of the Congress candidates were on the left side of the said table. The electric light had gone off from the side of the P.S.P. tables and the electric light on the remaining premises remained on all along. It was alleged on behalf of the petitioner that when the said electric light went off then the counting clerks began to move about hither and thither and would walk off the counting premises and in that confusion the ballot papers of the petitioner may have been removed away from the said tables and passed on to the tables of the opposite candidates. It may be made clear that though six P.Ws. including the petitioner herself deposed to the light affair yet not a single witness deposed that he had seen any ballot papers being removed from the tables of the petitioner and being carried to the other side nor did any witness say even this much that he or she had seen the ballot papers lying on the tables of the petitioner being in any way touched during the aforesaid interval. A capital was tried to be made out of the alleged fact that the counting clerks went out of the counting premises during that interval and from this circumstance it was sought to be inferred that they may have removed some ballot papers of the petitioner. Mere suspicion cannot take the place of a proof. When charges of a particular

nature are levelled by a petitioner in an election petition then the said charges are to be proved like those in a criminal case as the charges in the election petition are also of quasi criminal nature. Banking on surmises would not in any way lead to the conclusion that a particular allegation stands substantiated. As mentioned above, not a single witness had deposed that any ballot papers of the petitioner had been removed from her tables. So far as the allegation about the counting clerks moving out of the counting premises is concerned we have the clear evidence of P.W. 22 Jan Dayal the principal worker of the petitioner on the counting days to the effect that there was a Qanat wall below the verandah on one side to ward off the outsiders in-let to the counting premises and on the other side of the verandah was the wall of the rooms and he was positive that the counting clerks who had stepped down the verandah to smoke during that interval remained within the aforesaid enclosed premises. Thus according to him, none of the clerks had gone out of the counting premises during that interval. Though in the election petition it had been alleged that a confusion had been created when the said electric light went off yet no witness deposed to the said allegation. During the evidence the only assertion advanced by the petitioner is that the electric lights went off on the tables of the petitioner and after a few minutes candle light was provided and after another lapse of few minutes gas lights were also provided and then the electric light was also restored. According to P.W. 38 Ziauddin, the electric light had gone off at about 7 P.M. on the side of the P.S.P. counting tables and that fifteen to twenty minutes after the going off of the said light candlesticks had been provided and it remained dark on the side of the P.S.P. tables till 15 to 20 minutes and after half an hour of the burning candlesticks gas lights were provided and ten minutes later the electric light was restored. Whereas this witness claims that it had become dark when the lights went off yet in the election petition itself it has nowhere been alleged that it had become totally dark and the allegation contained therein is that it was in the dim light that the counting went on. The said witness further deposed that the counting clerks during that interval moved out hither or thither to enjoy smoke. He too had not stated that any ballot papers were removed by any one from the said tables. There were as many as two dozen counting agents of the two P.S.P. candidates to keep a vigil on the said tables and yet no one out of the said twenty-four counting agents comes forth to depose that any mishandling of the ballot papers during that interval had been done. This is the witness who gave out that he had suspected the *malafides* of the clerks who had moved out as above yet the other P.W. Sajid Husain deposed that there was no occasion for suspecting the *malafides* of the said clerks as they were just enjoying the usual smoke at that time. I have already pointed above that Ziauddin is a highly interested witness. He is the person who is presently in the Government Service and yet he appeared before the Tribunal without any summons having been served upon him through his Department. He claimed that he had been contacted by Sri Misra the counsel for the petitioner to appear as a witness and accordingly he put in appearance as a P.W. He admitted that Sri Misra was the sympathiser of the P.S.P. party and it was, therefore, that on being asked by Sri Misra to appear as a witness in this case the said witness did put in appearance though no summons had been received by him through his Department. It would thus appear that when this witness claimed that he suspected the *malafides* of the said counting clerks then that would not in any way advance the petitioner's case on the point in issue as it was a mere suspicion and nothing else and again the other witness of the petitioner referred to above contradicted the said witness on the said point. Again, when we come down to the statement of P.W. 39 Sajid Husain we find that he was positive that no counting took place in the dark. The next witness of the petitioner Sri Kapoor also claimed that fifteen to twenty minutes after the electric lights had suddenly gone off candlesticks had been provided and then the electric light was restored and the petrol was supplied in ten to fifteen minutes. He claimed that no simultaneous arrangement for gas lights and electric lights was there. This witness had been produced by the petitioner after Sri Bhatnagar, Assistant Returning Officer had been examined as a P.W. by the petitioner and after he had deposed that gas lights and electric lights were simultaneously there and when the electric light went off the gas light continued on to be there I have already discussed above that Sri Kapoor who was the Election Agent of Sri Tribhuwan Singh and erstwhile a counsel for the petitioner in this very petition and a ticket holder of the P.S.P. for the Municipal Elections was an interested witness and his testimony on other points had been contradicted to by other witnesses. Even this witness does not depose that any one had touched the ballot papers during that interval. Sri Kapoor claimed that he had not submitted any written complaint with regard to the failure of the aforesaid light as Jan Dayal Election Agent off Smt. Krishna Kumari had told him that he was filing a complaint about the said circumstance. When questioned as to whether he confirmed from Jan Dayal at any time after the said

incident as to whether the latter had submitted any written complaint the witness gave out that he did not inquire the said fact from Jan Dayal at any subsequent time. It is significant to observe that in connection with the light affair no complaint whatsoever had been made in writing by Jan Dayal though he had been submitting written objections with regard to minor incidents. Smt. Krishna Kumari who appeared as the last witness deposed that she had verbally told Sri Bhatnagar that the lights had gone off and some arrangements for lights be made, and that she had verbally told Sri Bhatnagar that the clerks would go out of the said premises. I have already observed above that Jan Dayal deposed that no counting clerks would go out of the counting premises. Thus the statement of the petitioner is falsified on that point. It has also been discussed above that according to Sajid Husain P.W. Smt. Krishna Kumari was not there in the counting on the said date. It would thus appear that witness after witness tried to substantiate the said allegation but they are at conflict with one another on various features of the said incident. According to Sri Bhatnagar the gas lights were there simultaneously with the electric lights and as such the question of darkness having prevailed does not arise. It was contended on behalf of the petitioner that if the gas lights were there there would have been no necessity for providing candlesticks. Candlesticks may have been there as an additional precaution and when the electric lights were off the same may well have been lighted along with the gas lights. Sri Bhatnagar is the petitioner's own witness and had not been declared hostile at any stage and when we find the statements of the other witnesses of the petitioner at conflict *inter se* then there does not appear any reason to disbelieve the statement of Sri Bhatnagar when he claimed that the gas lights too were there along with the electric lights and one is led to believe the said statement of Sri Bhatnagar when it is to be found that no written objection in that respect had been lodged by Jan Dayal or by Sri Kapoor. Even the petitioner's witnesses admitted that the electric lights in the other parts of the verandah were continuously there and that being so some light from the other verandahs would fall on the tables of the petitioner as well and as such the claim about the darkness having set in in entirety would be erroneous. It, therefore, follows that the petitioner has failed to establish that darkness had set in and has further failed to establish in entirety that any mischief had been done with the ballot papers belonging to the petitioner. Not a single witness had deposed to that circumstance. Consequently the said issue is decided against the petitioner.

So far the issues nos. 18 to 32 which pertained to the alleged irregularities in the polling and in the counting of votes have been dealt with. As mentioned above, all the said issues pertain to the Head 'A' described above. All these issues have been decided against the petitioner. Issue No. 33 which also pertained to an alleged irregularity has also been determined against the petitioner.

Now I come to deal with the allegations covered by the Head 'D' referred to above. Under this Head fall issues 8 and 9. I shall take up these issues presently.

Issue No. 9.—This issue relates to the allegation embodied in para 7(k) of the petition. In para 7(k) it is alleged that the respondents 1 and 2 in the course of their election propaganda assured and promised to the workers of Smt. Ganga Devi that if she were elected she would arrange to employ them in Government services and would secure promotion for those who were in Government service through the influence of her brother Sri Girdhari Lal Minister in the U.P. Cabinet. The persons who were promised employment and promotion are named therein as Baijnath Kureel, Maiku Lal Kureel, Buddha Lal, Kandhai Lal, Ram Dayal, Maiku Das, Ram Lal Kureel and Bechu Lal of Daudpur. Although in the petition it was claimed that such assurances had been offered to as many as eight persons yet when the stage of evidence cropped up then evidence was led only with regard to the said offers and assurances having been given to only two of the said persons, namely Baijnath (P.W. 4) and Ram Lal Kureel (P.W. 59). So far as the allegation about the said offer having been made to Baijnath (P.W. 4) is concerned there is the solitary testimony of Baijnath. Baijnath is a resident of Ghatampur to which place belongs Sri Pearcey Lal the husband of Smt. Krishna Kumari. Sri Pearcey Lal has been a member of the Parliament on the congress ticket from 1952 to 1957. Thus his influence on the locality to which he belongs would obviously be there. In this case as I shall show later a large number of witnesses had been picked up by the petitioner either from Ghatampur to which place her husband belongs or from Behta Gopi to which place the petitioner herself belongs, and the said witnesses are again of the Kureel Biradari to which the petitioner belongs. Baijnath is also a witness of the said type. He claimed that he had worked for Sri Tripathi and Smt. Ganga Devi in the days of election and had canvassed votes for them in his own village and in five or seven other villages. He deposed that he had distributed leaflets of the said candidates and he pointed out certain leaflets as having been distributed by him. I shall later

discuss that part of his evidence when I would deal with the question of the distribution of leaflets. He is presently a gang man in the Railway Department where he was posted on the 21st of March, 1957. He claimed that he got the said job through the Employment Exchange. He added that during the days of election Smt. Ganga Devi was telling him that he should work for her and she would secure him a job and that Captain Mohan Lal had also told him that if he would work for Smt. Ganga Devi then she would secure a job for him. In the examination-in-chief itself he deposed that after the elections he did not go to Smt. Ganga Devi at all. It is an admitted fact that Captain Mohan Lal is the brother of Sri Pearey Lal the husband of Smt. Krishna Kumari. It, therefore, does not appeal to reason that Captain Mohan Lal would induce the said witness to work against Smt. Krishna Kumari. It was suggested by the respondents 1 and 2 that Baijnath is a cousin of Sri Pearey Lal. The said witness did not admit the correctness of the said suggestion in so many words but admitted that he is the khandani of Sri Pearey Lal. He further admitted that his house is adjacent to that of Sri Pearey Lal. It would thus appear that he is akin to Sri Pearey Lal and is an interested witness and has been procured to support the cause of the petitioner. It is not at all conceivable that if this witness had worked for Smt. Ganga Devi and had been offered the aforesaid assurance and promise then he would have failed to contact Smt. Ganga Devi after the elections for securing a service when he was actually in need of one as he was an unemployed person according to him. He would have readily availed of the opportunity by approaching Smt. Ganga Devi if he had received any such offer from her. His statement is not at all convincing and his solitary testimony does not establish that the aforesaid alleged assurances or promise had been made to him by Smt. Ganga Devi.

Coming to an assurance having been made to P.W. 59 Ram Lal we have the evidence of Ram Lal a P.W. on the said point coupled with the statement of D.W. 1 Bechu Lal. This D.W. had been produced by Sri Tribhuwan Singh to depose to many a thing for the support of the petitioner. He was almost an all rounder and when the petitioner after having closed her entire evidence felt the necessity of filling up the gaps then Sri Tribhuwan Singh stepped in by producing two witnesses to help the petitioner and one of the said witnesses is Bechu Lal. Ram Lal Kureel is employed as a Harijan Kalyan Supervisor in the District Unnao under the District Planning Officer. He is presently working under the District Harijan Kalyan Officer. He gets Rs. 39/- per mensem as salary and D.A. and cycle allowance besides that. He deposed that on 28-2-57 Smt. Ganga Devi had met him at the premises of Pancham Lal who is the Secretary of the Dalit Varg Sangh and there she had told him that he knew that her brother Sri Girdhari Lal was a Minister and had got the Harijan Kalyan Vibhag opened and in that Department Supervisors had been appointed and that he should therefore help her in her elections and in response thereto the witness had told her that as he had joined Government service he could not consequently work for her in the election. Formerly he had been a member of the Congress according to him. He further claimed that Smt. Ganga Devi had talked to him in a threatening tone whereby she meant to convey that if he would not help her then he may come to some harm. He further stated that Smt. Ganga Devi had told him to meet her off and on but he had never met her thereafter. He had deposed to the distribution of certain leaflets on behalf of Smt. Ganga Devi which shall be discussed a little later. This witness too is a resident of a place situated one mile away from Ghatampur. He is a resident of Dundpur. He admitted that he had submitted an application for being appointed as Harijan Kalyan Vibhag Supervisor. He further conceded that Sri Niranjan Lal the brother of Sri Pearey Lal is the Deputy Director of the Department in which the said witness is serving. Thus it is obvious that this witness who belonged to a place situated in the neighbourhood of the village of Sri Pearey Lal and who was serving under the brother of Sri Pearey Lal was directly under the thumb of the petitioner's influence and it is not conceivable that Smt. Ganga Devi could approach him with the aforesaid assurances or threats. Again, from his own statement it is obvious that he had not been prepared to work for Smt. Ganga Devi. He admitted that when he had applied for the aforesaid job then Sri Pearey Lal was an M.P. He however denied that it was at the recommendation of Sri Pearey Lal that he had got the aforesaid job. He appears to be a pocket witness of Sri Pearey Lal. He had to admit that an altercation had taken place between Sri Pearey Lal and some other persons near the railway station Unnao and Sri Pearey Lal had lodged a report of that incident at the police station and this witness was cited as a P.W. in that case as well. He admitted that his house is situated only one furlong away from that of Sri Pearey Lal. He further admitted that he had appeared as a P.W. in a case in the Court of the Bench Magistrates but he expressed forgetfulness as to who were the complainant and the accused in that case. It had been put to him that the parties to that case

were Sri Pearey Lal and Chiranji Lal and yet he expressed forgetfulness about the same. He admitted that he had received summonses in that case and yet added that he did not know anything about that incident. It would thus appear that even in that case in which Sri Pearey Lal was a complainant the said complainant had cited Baijnath as a P.W. though according to the latter he did not know anything with regard to that incident. All these circumstances show that Sri Pearey Lal could depend upon this witness if and when so required probably because he was serving under the brother of Sri Pearey Lal. Under these circumstances, no reliance can be placed upon the testimony of this witness. He admitted that he had never told Smt. Krishna Kumari or to any other person that Smt. Ganga Devi had talked to him as above and yet we find that he has been ushered in as a P.W. about the said circumstance. He admitted that in the days of election Dr. Sita Ram was the Minister of the Department in which this witness was serving as a Supervisor and that Sri Girdhari Lal had nothing to do with that department. Pursuant to the aforesaid discussion no reliance can be placed upon his testimony. The other witness who, as mentioned above, supported her cause is D.W. 1 Bechu Lal produced as a witness by Sri Tribhuwan Singh. This D.W. claimed that on 28-2-57 he was sitting on the shop of Pancham Lal when Ram Lal P.W. was told by Smt. Ganga Devi that the Harijan Department in which the said witness was serving had been got opened by her brother and so he should help her in the matter. The learned counsel who led the examination-in-chief of the said witness being not satisfied with the aforesaid statement of the said witness questioned him by asking "Did Ram Lal do any work in the said election" and the witness deposed that he did not know anything about it. This witness did not depose that any threat had been offered by Smt. Ganga Devi to Ram Lal. I shall later show that this witness who, as observed above, was produced by Sri Tribhuwan Singh to help Smt. Krishna Kumari had the audacity to recognise signatures in English on certain papers though he himself is ignorant of the English alphabets. He claimed that the signatures on Ex. 86/P.W. 62 and 87/P.W. 62 were those of Sri V. B. Varma Additional District Magistrate and yet he had to admit that he could not say that letters are written in the signatures of Sri Varma. He admitted that he did not know English at all and yet he was prepared to help the petitioner for proving the signatures of the Additional District Magistrate. The entire evidence of this witness discloses that he is a got-up witness. Thus there is no proof to the effect that Ram Lal had been offered any assurance or promise by Smt. Ganga Devi. Consequently issue no. 9 is decided against the petitioner.

Issue No. 8.—This issue pertained to the allegation embodied in para 7(i) of the election petition which is to the effect that Chiranji Lal resident of Ghatampur was an official of the Excise Department being a Prohibition Pracharak and was posted in District Unnao and that leaflet Ex. 7 which had been published at Anupam press Lucknow in support of respondents 1 and 2 had been signed by Chiranji Lal Excise Officer along with others and was distributed by Chiranji Lal himself and by respondents 1 and 2 between the 25th February 1957 and 9th March 1957. The corrupt practice sought to be put forth through the said allegation is that Chiranji Lal was an Excise Officer and his name had been utilised by making him one of the signatories to the said leaflet and by availing of his services in distributing the said leaflet. It may be specified here that though in connection with certain other leaflets which are mentioned in the petition it had been specified that through the said leaflets propaganda on ground of caste and community had been made by the respondents yet with regard to this leaflet no such allegation had been incorporated in the petition. The allegation as made in the petition with regard to this leaflet is confined only to Chiranji Lal having been an author of the said leaflet along with others and the said leaflet having been distributed by Chiranji Lal and some other persons. So the first question to be determined is as to whether Sri Chiranji Lal is an Excise Officer as contemplated by Section 123(7) of the Representation of the People Act. The said sub-section lays down certain classes of persons in the service of the Government whose services cannot be procured by any candidate for assistance in the course of elections and in 7(e) of the said section Excise Officers are also included in the said class. It is to be observed that in 7(c) and (d) it has been specified that members of the armed forces of the Union and members of the police forces do come under the aforesaid class which means that every person belonging to the armed forces or to the police force is covered by the aforesaid prohibition but in the case of 7(e) we find that the words used are Excise Officers and not "members of the Excise Department". So all the members of the Excise Department are not hit by the said prohibition. Only the Excise Officers have been covered by the said prohibition. If every member belonging to the Excise Department were to be covered by the said prohibition then the language employed in 7(a) would also have been similar to the language used in 7(c) and 7(d). In the U.P. Excise Act the words "Excise Officer"

are defined in section 3(2). Excise Officer according to that definition means a Collector or any officer or person appointed or invested with powers under section 10. It has not been shown by the petitioner that Chiranji Lal was a person appointed or invested with the aforesaid powers. According to P.W. 37 Sri Daya Nand Varma who is an Excise Clerk in the Collectorate Unnao Chiranji Lal was a Honorary Pracharak of prohibition in the Excise Department getting a honorarium to cover up his D.A. and T.A. and that he would not get any pay. He would merely get Rs. 50/- per mensem as honorarium. He added that on 21-11-56 the order of his appointment as above had been received in their office and his appointment was to last till 31st March 1957. The said appointment order is Ex. 72/P.W. 37. A perusal of that order discloses that it was a general order notifying that several persons including Chiranji Lal had been appointed as Honorary Pracharaks for doing prohibition and social uplift work with effect from the date of their entertainment till March 31st 1957 and that they would get Rs. 50/- as remuneration in lieu of their T.A. and D.A. etc. The said letter which as mentioned heretofore is a general circular did not specify the actual date from which Chiranji Lal's appointment as above actually came into being. Sri Daya Nand Varma added that Chiranji Lal is still working as above. He gave out that the Honorary Pracharaks are not designated as Excise Officers or Excise Officials. So this witness of the petitioner herself negatives the claim of the petitioner about Chiranji Lal being an Excise Officer. Sri Bhatnagar (P.W. 52) in the examination-in-chief conducted by the petitioner deposed that at the time of the elections he was District Excise Officer. He admitted that when he was District Excise Officer then Chiranji Lal was working as a Honorary Prohibition Pracharak. He also gave out that Chiranji Lal would not get any salary but would get some amount in lieu of T.A. and D.A. He deposed further in the examination-in-chief itself that it was wrong that the leave rules which apply to Government Servants apply to Chiranji Lal as well and added that the Government Servants Conduct Rules did not apply to the said Pracharaks including Chiranji Lal. He further deposed that Chiranji Lal was not working as Pracharak in the said Department in the days of the elections in question and that he was appointed as such after July 1957. He gave out that the Pracharaks were under him as District Excise Officer. Thus from the statement of the aforesaid two witnesses it is obvious that Chiranji Lal who was a Pracharak was not an Excise Officer as contemplated by section 123(7) of the aforesaid Act and further according to Sri Bhatnagar who was then District Excise Officer, Chiranji Lal was not even posted as a Pracharak in the days of the election. The petitioner has, therefore, failed to establish that Chiranji Lal was an Excise Officer. So the question of the services of an Excise Officer having been utilised by the respondents 1 and 2 in furtherance of their election prospects does not arise and even if it be assumed that the aforesaid leaflet was distributed by Chiranji Lal, then too no corrupt practice would be established to have been committed. Again, there is no evidence to the effect that Chiranji Lal was actually a signatory to the said leaflet. It is true that Chiranji Lal's name appears printed on the said leaflet but no one has deposed that the original of the said leaflet had actually been signed by Chiranji Lal. The original had not even been sent for by the petitioner to substantiate that the said original contained on it the signature of Chiranji Lal. Chiranji Lal is admittedly the uncle of Sri Pearey Lal, though it is presently claimed by the petitioner that there was litigation between Sri Pearey Lal and Chiranji Lal. By sending for the original Sri Pearey Lal or some one else could have deposed to the signature of Chiranji Lal on the said document but no attempt was made to substantiate the same. Thus we do not know if Ex. 7 or its original actually contained on it the signature of Chiranji Lal. P.W. 54 Sharda Kant Shukul the Proprietor of Anupam Press Lucknow had been produced by the petitioner as a witness to establish that Ex. 7 had been printed at their press. He had produced a receipt Ex. 83/P.W. 5, and had deposed that it pertained to Ex. 7. In the said receipt the amount pertaining to the printing of the said leaflet is entered in the name of Smt. Ganga Devi. The said witness could not, however, say from memory as to who had got the said leaflet printed at their press. He gave out that as the said leaflet contained the imprint of their press, consequently he deposed that the said leaflet had been printed at their press. Smt. Ganga Devi admitted that one Munni Lal of Mohan Lal Ganj had come to her and had told her that they had got the leaflet Ex. 7 printed and distributed for her cause and she should pay him the printing charges thereof and accordingly she had paid the same to him and thereafter she had shown the same in the return of her expenses and had filed the said leaflet along with her election return. So there remains no dispute about the said leaflet having been issued and distributed. Since the allegation with regard to the said leaflet is confined to the said leaflet having been issued and distributed by Chiranji Lal and others and since primarily the attack was made to be based on Chiranji Lal having acted as above in the capacity of being an Excise Officer it is not

necessary for me to probe into the contents of the said document as no allegation with regard to this leaflet had been made with regard to the nature of the contents of the said document. It has already been held above that Chiranji Lal was not an Excise Officer and as such the alleged corrupt practice covered by this issue is not substantiated. *This issue is consequently decided against the petitioner.*

After having dealt with the issues 8 and 9 above and having decided the same against the petitioner the points covered by the Heading 'D' above stand disposed of.

Before coming to the discussion about the headings 'B' and 'C' mentioned above, it would be worthwhile disposing of issue no. 1.

Issue no. 1.—This issue arises out of the allegation embodied in para 5 of the petition which is to the effect that the election propaganda of respondents nos. 1 and 2 was joint and they had made a common cause in this election and had identified their interest with each other being the official congress candidates. The respondents 1 and 2 in their pleas had admitted that they were the official candidates and had denied the rest of the said allegation. Both the respondents 1 and 2 had admitted that they had no private agency of their own for the purposes of doing their election work and that the agency of the District Congress Committee had been doing their work. Sri Tripathi had admitted that the policy of the congress was that the votes were canvassed by the said party in the name of the party and not in the name of any individual candidate who had been made to stand on the party's ticket. He further conceded that the congress workers of a particular locality as such would work for the congress candidate to the Parliament as well as for the congress candidates to the Legislative Assembly and that every congress candidate would ask for votes for himself as well as for other congress candidates standing either for the Assembly or for the Parliament. He had however added that he and Smt. Ganga Devi had never toured round the constituency in the days of the election together. He went on to add that he had taken a pledge that he would not canvass votes for himself. Smt. Ganga Devi claimed that she did not belong to District Unnao and formerly she was a member of the Parliament from Bara Banki Constituency and this time she had been given ticket from Unnao Seat and that she was actually an alien to the District Unnao. She also admitted that according to the principles of the Congress the election work of all the Congress candidates was to be done in common but added that as she was a new person to this district, consequently she did her work individually by directly trying to contact the persons of this district individually. She denied that she had accompanied Sri Vishambhar Dayal Tripathi on election tours. She gave out that the District Congress Committee was doing the office work pertaining to the election of the Congress candidates. She admitted that she had got a telephone connection installed at the District Congress Committee Office, Unnao, during the days of election. There is no convincing direct evidence on behalf of the petitioner to substantiate that the respondents nos. 1 and 2 had been carrying on their election propaganda jointly. It is true that the District Congress Organisation Election Agency had been doing work for all the Congress candidates including the said respondents, and in that connection certain leaflets were also issued by the said District Congress Office or even by some of the workers belonging to the Congress for all the Congress candidates including the said respondents. Since both the said respondents were the Congress nominees, consequently, the Congress Party as such would work for them and to that extent it may be inferred that the election work of the said respondents was joint but when we have got to deal with a particular corrupt practice having been done by a certain person then it has got to be specifically ascertained as to whether that corrupt practice was done at the instance of a particular candidate or with his consent, connivance or knowledge and in that case merely because a certain worker of the congress had done that corrupt practice it would not be safe to infer that each and every candidate set up by the Congress though unaware of the said corrupt practice is liable for the same. For attributing the guilt regarding a particular corrupt practice on an individual candidate it shall have to be specifically proved by the petitioner that a particular corrupt practice committed by a certain person was done with the consent, connivance or knowledge of a particular candidate. It is thus held that except for the common machinery of the District Congress Committee doing election work for the said candidates and some congress men having issued leaflets for the Congress candidates including the respondents no other election work or propaganda had been done jointly by the said respondents and that it will have to be determined with regard to each corrupt practice as to what was the effect of the aforesaid common propaganda done by the said organisation as the effect of a particular corrupt practice regarding an

individual candidate has got to be decided on its merits with regard to each candidate individually to assess as to whether the same was done with the consent, connivance or knowledge of a particular candidate. Thus the effect of such a propaganda would be determined with regard to particular corrupt practices alleged to by the petitioner. *The said issue is accordingly decided as above.*

Issues Nos. 3, 4, 5 and 6.—Issue No. 3 pertains to the issuing and distribution of leaflets Exs. 1 and 2 while issue No. 4 pertains to the issuing and distribution of leaflets Exs. 3, 4, 5 and 6. The issue No. 3 pertains to the allegations in para 7(a) and 7 (b) of the election petition, while issue No. 4 relates to the allegation contained in para 7(c), 7(d), 7(f) and 7(g). Generally speaking the objection of the petitioner to the leaflets Exs. 1 and 2 is that the said leaflets contain a false statement of fact which the respondents 1 and 2 believed to be false and did not believe to be true in relation to the petitioner's personal character and in relation to her candidature. It was alleged by the petitioner that she had never signed any congress pledge, nor had she given any undertaking that if she were not given congress ticket then she would not fight the election against any congress candidate and had added that, in fact, the petitioner was not even a four anna member of the Congress and that through the aforesaid leaflets Exs. 1 and 2 the petitioner had been charged with improper conduct and thereby her cause as a candidate had been weakened as the electorate had been seriously prejudiced against her and thereby her cause had been adversely affected in the elections. With regard to the leaflets Exs. 3, 4, 5 and 6 the objection of the petitioner is that the said leaflets contained systematic appeal on the grounds of caste and community and the said appeal had unduly influenced the voters. With regard to leaflets Exs. 3 and 4 it was also alleged that they contained certain false statements of fact with regard to Smt. Janki Devi having been the President of the Scheduled Caste Federation, Uttar Pradesh. Both these respondents had admitted in their pleas that the leaflet Ex. 1 had been issued by Sri Bal Ganga Dhar Tripathi, but it was denied that the said pamphlet contained any statement of fact which was false and which was either believed to be false or was not believed to be true. The distribution of the said leaflet by the respondents was denied. It was further given out that the allegation as couched in para 7(a) of the petition did not make out a charge. With regard to leaflets Exs. 2 and 3 both the respondents pleaded ignorance about their having been issued and distributed. They claimed that they had no knowledge about their having been issued and distributed and added that they had not given any consent or connivance for the issuing and the distribution of the said leaflets. In their written statements the respondents had given out that the leaflet Ex. 4 had been issued but the rest of the allegation as embodied in para 7(d) of the petition had been denied. With regard to leaflet Ex. 5 it had been given out by the respondents in their written statement that the said leaflet as filed by the petitioner had not been issued and distributed but a pamphlet containing the same subject matter as the leaflet Ex. 5 had been printed at Jagirti press and had been issued by Sri Ram Adhin Singh. It was however denied by the respondents that the said leaflet had been distributed by the said respondents. The issuing and distribution of the leaflet Ex. 6 had been denied. Again, it had been contended by the said respondents that the leaflets Exs. 3 to 6 did not contain in them any systematic appeal on the ground of caste and community. In short, the issuing of leaflets Exs. 1 and 4 is admitted and with regard to Ex. 5 it is conceded that another leaflet from another press containing the subject matter as embodied in Ex. 5 had been issued & that Ex. 5 had not actually been issued and the issuing and distribution of the other leaflets is denied. The distribution of leaflets Exs. 1, 4 and 5 too is not admitted to. The respondents had denied that any of the said leaflets had been distributed by them or by their workers and agents, much less, with their consent, connivance or knowledge. There are two points to be considered with regard to each leaflet, firstly as to whether it had actually been issued and if so, whether it was so issued by the said respondents or with their knowledge, consent or connivance and secondly if the said leaflets had been distributed by the said respondents or by their workers and agents with their consent, connivance or knowledge, the next question then to be determined would be as to whether the contents of the said leaflets make out any corrupt practice as contemplated by the Representation of People Act and if the answer to the said query be in the affirmative, did the same materially affect the cause of the petitioner. As mentioned above, with regard to some of the leaflets they had been admitted that they had been issued and if the same had been issued then in all probability the said issuing would have been followed by the distribution of the said leaflets, though the manner of the distribution may or may not be according to the allegation as advanced by the petitioner, on whom lies the onus to establish that the said distribution did take place in the way in which it is alleged to by the petitioner. To be more specific it is alleged by the petitioner that the said

leaflets were distributed by the respondents themselves and by their workers and agents, so it will have to be proved by the petitioner that the respondents themselves did effect the distribution of the said leaflets and their workers and agents, if they were so at all, did distribute the said leaflets in consultation, connivance etc. of the respondents. It may be in certain cases that a particular leaflet was issued by a certain member of the Congress and the said leaflet may have been distributed by the said Member of the Congress and yet the respondents may not have actually distributed the same or may not have even been in the know of the said leaflet having been distributed and may not have accorded any consent or connivance to any of their workers and agents for distributing the same. Thus it is one thing that a particular leaflet was distributed and it is another thing that it was so distributed with the knowledge, consent or connivance of the respondents or was so distributed by the respondents themselves. Under section 100(I)(b) of the Representation of People Act the election can be declared void if it is proved that a corrupt practice had been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. So it is very essential to establish that the aforesaid issuing or distribution of the said leaflets, assuming that the subject matter embodied therein was hit by the provisions embodied in section 123(3) and (4) of the said Act that the said corrupt practice had been committed by the returned candidate or his election agent or that the said person had accorded consent to any person to commit the same. Merely because a certain person may have issued a certain leaflet and distributed the same the said circumstance by itself would not make out an offence as contemplated by Section 100(I)(b). According to Section 100(I)(d) (ii) the election of the returned candidate shall be declared void if the result of the election, in so far as it concerns a returned candidate has been materially affected by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of such a candidate or election agent. So where a corrupt practice had been committed by a person other than the candidate or his election agent or a person acting with their consent and the said corrupt practice had been committed in the interest of the returned candidate then it has got to be proved that the said corrupt practice has materially affected the result of the election in so far as it concerns a returned candidate and when any corrupt practice had been committed by a returned candidate himself or his election agent or by any person with their consent then the commission of the said practice as such would by itself be a ground for declaring the election void. So in the present case we have got to see as to whether the issuing and distribution of the said leaflets, if at all, had been done in such a way that the same would be hit by the provisions of Section 123(3) and (4) of the said Act and would be covered by the provision embodied in section 100 (I) (b) and 100 (I) (d) (ii) of the said Act. To start with I shall deal with the question about the alleged distribution of the said leaflets as alleged to be by the petitioner as the evidence led by the petitioner with regard to the same is common to all the said issues and would thereafter deal with the subject matters embodied therein to assess as to whether the distribution having been proved, if so, the said contents make out a charge as alleged. Both the sides had produced evidence on the point of the distribution of the said leaflets. The petitioner's witnesses gave out that at various stations the leaflets had been distributed while the respondents' evidence was to the effect that the said leaflets had not been distributed at all. There are some points which have got to be taken into consideration while assessing the evidence led by the petitioner to prove the issuing and distribution of the leaflets Exs. 1 to 6. Most of the evidence led by the petitioner related to the distribution of leaflet Ex. 1, its issue having been admitted by the respondents 1 and 2. Again most of the witnesses of the petitioner deposed to the distribution of the leaflet Ex. 1 by Smt. Ganga Devi herself and only three or four witnesses deposed to the distribution of the leaflets by Sri Tripathi, so much so, that no witness of the petitioner deposed to the distribution of any leaflet by Sri Tripathi himself in the District of Unnao. Smt. Ganga Devi was admittedly a stranger to the constituency from which she was contesting the seat. She belonged to Dehradun and formerly had been an M. P. from Barabanki constituency. She depended for her work upon the agency of the District Congress Committee. The witnesses tried to show that the said lady was disbursing leaflets herself by the bus stands, by roaming about in the bazars and by making people moving about here or there to stop and to receive leaflets from her hands. It has got to be appreciated as to how far this circumstance would be credible. Another aspect from which the evidence has got to be looked to is that witness after witness stepped forth to depose that he recollected the titles and the subject matters embodied in the leaflets distributed by the respondents 1 and 2 and yet they expressed ignorance about the headings and the contents of other leaflets which they received from

other parties. Another point which merits consideration in this case is that large number of witnesses produced by the petitioner either belonged to the Biradari of Krishna Kumari or belonged to the villages where she resides or where her husband resides. It would not be a strange coincidence that out of the voters comprising of several lakhs the petitioner could concentrate her attention on only those witnesses who resided in her village or in the village of her husband or in the vicinity near about to depose to the factum of distribution and that too at the hand of respondent no. 2 herself. The said respondent would also realise that it would be hardly worthwhile for her to go to the next door neighbours of Smt. Krishna Kumari in her village to propagate to them and to ignore the other parts of such a vast constituency. With these general features of the evidence I now come to discuss briefly the testimony of the various witnesses.

P. W. 1 Ram Dayal is a resident of Unnao. He is a cobbler by profession and belongs to the Biradari of Smt. Krishna Kumari as was admitted to by him. He gave out that during the election days on the 22nd or 23rd February, 1957 Smt. Ganga Devi and Captain Mohan Lal had handed over leaflet Ex. 1 to him. He added that the congress candidates were doing their election work jointly. In his zeal to establish that he was a sympathiser of the Congress he gave out that he was a four anna member of the Congress from 1951 to 1957 and yet he deposed that he had paid four anna membership fee only for one year in 1951 and thereafter he never paid any membership fee. That shows that his claim about his having been a member of the Congress year after year upto 1957 is wrong. Captain Mohan Lal is the brother of Shri Pearey Lal, the husband of Smt. Krishna Kumari petitioner. It does not appeal to reason that Captain Mohan Lal would ally himself with Smt. Ganga Devi as against the wife of his brother. This witness who is a Raidas and belongs to the Biradari of Smt. Krishna Kumari does not inspire confidence more particularly when a strange mode of getting leaflet Ex. 1 proved through this witness had been adopted by the learned counsel for the petitioner. Leaflet Ex. 1 was placed by the learned counsel for the petitioner before the said witness who then deposed by saying, "Yes. This was the leaflet which had been distributed." This would be an erroneous way of getting a particular leaflet proved. The witness ought to have been left to himself to pick out the leaflet in question and then it could have been appreciated that the said witness had rightly or wrongly picked out the said leaflet. Later I shall show while dealing with the evidence of some other witnesses that they deposed to the subject matter contained in the heading of leaflet Ex. 1 but when it came to the pointing out of leaflet then they pointed out another leaflet. Thus so far as this witness is concerned I do not attach any importance to his having deposed to the said leaflet which was placed before him by the counsel for the petitioner.

P. W. 2 Deep Chand is a resident of Ghatampur. I have already observed above that a large number of witnesses were picked up either from Ghatampur or from Behta Gopi to which place the petitioner or her husband belonged. This witness claimed that he had obtained leaflet containing the title "Smt. Krishna Kumari had been turned out of the Congress" and that symbol of a pair of bullocks were printed on the said leaflets. It would not be difficult to tutor any person to get to his memory the aforesaid title and the said symbol and then to pick up the aforesaid leaflet which too was not mixed with any other leaflets of that type. He claimed that Smt. Ganga Devi had handed over the said leaflet to him two or three days before the polling and that Chiranji Lal was at that time with the said Jady. This witness also admitted that he belonged to the Biradari of Smt. Krishna Kumari. It is strange that this witness recollected that Smt. Ganga Devi had come to his village and yet he could not recollect as to which other candidates had come to their village nor did he recollect as to which other candidates leaflets had been delivered to him and he himself added that since it was a matter of one year, consequently he did not recollect about others. If his memory would fail him after the lapse of one year then he had no reason to re-collect the title etc., of the leaflet in question. After having made the said statement he became alert and deposed that except for Smt. Ganga Devi no other candidate had come to him. Smt. Ganga Devi was a stranger to him as was deposed to by the said witness. According to this witness Smt. Krishna Kumari had not come to their village during the days of election. He admitted that the father-in-law of Smt. Krishna Kumari lived in their village. His statement is totally contradicted by P. W. 4 Baijnath who deposed that Smt. Krishna Kumari had visited Chatampur during the days of election. It appears that this witness is concentrating his attention on Smt. Ganga Devi for proving Ex. 1 and is trying to depose that Smt. Krishna Kumari had not visited their village so that his kinship with Smt. Krishna Kumari may not come into light and yet we find that his statement is contradicted by P. W. 4. He admitted that Shri Pearey Lal lives in his village. All these circumstances show that he is a witness who is under the

influence of the petitioner and her husband and has been put up to depose to the aforesaid distribution at the hands of Smt. Ganga Devi though the same was not actually so done.

P. W. 3 Mahabir gives a rude shock to the petitioner by deposing that he had received one leaflet by Smt. Ganga Devi and others which contained that Smt. Krishna Kumari had been turned out of the congress and also deposed to the aforesaid symbols contained on the said leaflet. He went on further and claimed that if the said leaflet is shown to him then he would be able to recognise it and yet when he was asked to pick up the said leaflet he pointed out leaflet Ex. 4 instead. This shows as to how the witnesses had been made to take to their memory the aforesaid title and the symbol, and when the matter came to the actual pointing out then the said witnesses failed to do so. He claimed that he could read capital letters of Hindi and to test his knowledge of Hindi he was asked to read the capitally written subject matter encircled blue on Ex. 8 and he read the same erroneously. That shows as to how the witnesses had been got up to depose to the distribution of leaflet Ex. 1. He also belongs to the *biradari* of Smt. Krishna Kumari. His statement needs no further comments as he is obviously a got-up witness.

P. W. 4 Baijnath is another resident of Ghatampur who claimed that Smt. Ganga Devi had handed over leaflet Ex. 1 to him at Ghatampur. This is the witness whose testimony has already been discussed above when the question about Smt. Ganga Devi having offered him promise of securing service for him had been discussed and his evidence had been discarded and it had been held that this witness who is the next door neighbour of Shri Pearey Lal had been set up to depose to the distribution of the said leaflet as well as on the point of his having been influenced by the aforesaid offer of service. His evidence having been rejected earlier merits no further consideration. This witness also reposed that he had received leaflets of other parties as well and yet he does not recollect the subject matter of any of the said leaflets. He had admitted that he is a Khandani of Shri Pearey Lal. On account of these reasons his evidence has got to be rejected.

P. W. 5 Sant Baksh who was the Polling agent for the P. S. P. candidates claimed that he had gone to various villages to work for Shri Tribhuwan Singh and Smt. Krishna Kumari and in Behar Bazar Smt. Ganga Devi had given to him the leaflet Ex. 1. He had the audacity to depose that the distribution of the said leaflet had had an effect on the voters and yet he gave out that he could not say as to how the distribution of the said leaflet had affected the said voters. He claimed that he had not told any one that he had seen the distribution of Ex. 1 as above. If that were so there could be no reason for Smt. Krishna Kumari to pick out this witness for deposing to the point in issue. This witness in his zeal to support the cause of the P. S. P. candidate gave out that the P. S. P. had issued no leaflets and yet other witnesses contradicted him on that point. He made an absurd statement by deposing that he himself would show leaflet Ex. 1 to the various villagers though according to him he realised that the villagers would feel after reading the said statement contained in leaflet Ex. 1 that Smt. Krishna Kumari had been changing her party loyalties and was not worthy of credence. This witness who was working for Smt. Krishna Kumari would be expected to conceal the effect of the said leaflet and would not show it to one and all. He made a funny statement that he would show the said leaflet to the voters for the benefit of the P. S. P. candidates. His entire statement reveals that he is a got up witness.

P. W. 6 Debi Baksh Singh who is a Thakur gave out that he had worked in the last Assembly Elections for the P. S. P. Party. He claimed to have gone to Behar Bazar some ten to fifteen days before the polling day and he had received leaflet Ex. 1 from Smt. Ganga Devi and had also received leaflet Ex. 7. This witness contradicted the statement of the earlier witness by deposing that the leaflets of P. S. P. had also been distributed. It would thus appear that there could be no reason for such a contradiction between the statements of the said witnesses except that they are out to malign Smt. Ganga Devi and were out to shield Smt. Krishna Kumari as they were the workers of Smt. Krishna Kumari or else they had actually not received any leaflets as claimed to by them. Although he claimed that he had himself distributed leaflets of the P. S. P. yet he does not recollect the subject matter of any one of them, nor does he recollect the days, the dates or the months in which he had received or distributed leaflets other than those mentioned above. When such is the state of affairs of evidence of this witness then no reliance can be placed upon his testimony even with regard to the leaflets in question, more particularly, when he is

an interested witness. This witness too had never told Smt. Krishna Kumari that he had received the aforesaid leaflets and yet he too had been showed in as a witness on the said issue. The learned counsel for the petitioner urged that this witness is a Thakur and does not belong to the Biradari of Smt. Krishna Kumari but he forgets that Shri Tribhuwan Singh the other P. S. P. candidate for whom this witness had been working along with Smt. Krishna Kumari was also a Thakur.

P. W. Bhagwati Singh claimed that three or four days before the polling day Smt. Gana Devi and Chiranji Lal had handed over to him leaflets Exs. 1 and 7 in Pakhra Buzurg Bazar. He also gave out that he had received the leaflets of other candidates as well and that other candidates had also met him and yet he gave out that he does not recollect as to when had he received the other leaflets and as to when had the other candidates met him nor does he recollect the subject matter of the other leaflets. This witness claimed that P. W. 8 Shankar Singh who also claimed to have received the said two leaflets in the said Bazar on the day met him there in the said Bazar when they had received the said leaflets and the aforesaid other witness contradicts him by deposing that both of them had gone from their village together to the aforesaid bazar. Thus it would appear that as a matter of fact the theory about the said two witnesses having gone to the said bazar and having received the said leaflets is a made-up one. P. W. 8 when asked to identify Smt. Ganga Devi deposed that he did not recognise her nor does he recognise Smt. Krishna Kumari, and yet Smt. Krishna Kumari has picked him up from some where to depose to the said incident. In view of the aforesaid contradiction in the statements of the said two witnesses and in view of the fact that this witness cannot even identify Smt. Ganga Devi the evidence of the aforesaid two witnesses falls through.

P. W. 9 Sant Ram who is a resident of Behta Gopi the place to which Smt. Krishna Kumari belongs and who was a worker for the Socialist Party claimed that he had gone to Bighapur Bazar some four or five days before the polling and there Chiranji Lal was distributing leaflet Ex. 7. Smt. Ganga Devi, according to him, had visited their village two or three days before the polling and had distributed leaflet Ex. 1 whereby he had been affected a little. Having so stated in examination-in-chief he had to depose in cross-examination that he had not at all been affected by reading the aforesaid leaflet and had voted for the person of his own choice. It is strange that the people belonging to the village of the petitioner claimed to have read Ex. 1 according to which Smt. Krishna Kumari had been turned out of the congress and yet they did not even inquire from her as to whether that allegation was correct or wrong. They could have easily collected that information from Smt. Krishna Kumari or the kinsman of the said lady to be in a position to know as to how far the said allegation was correct. This witness too had received leaflets of other parties and yet has no recollection of the contents about the other parties. At one stage this witness gave out that after reading leaflet Ex. 1 he had thrown it away and then he took a somersault and gave out that his earlier statement did not pertain to the said leaflet. The other witnesses of Behta Gopi are P. W. 10 Ram Lal, P. W. 11 Brindaban and P. W. 13 Durjan. The evidence of all these witnesses who claimed to have received leaflet Ex. 1 from Smt. Ganga Devi when thoroughly scanned shows that they are got-up witnesses and are coming forth to depose to the receipt of Ex. 1 at the hands of Smt. Ganga Devi at the instance of Smt. Krishna Kumari. P. W. 10 Ram Lal gave out that in Behta Gopi Smt. Ganga Devi had delivered the said leaflet to him. He claimed that he had been influenced by the said leaflet and yet he had not made any inquiry from Smt. Krishna Kumari about the allegation contained in the said leaflet. P. W. 11 Brindaban also claimed to have received Ex. 1 and deposed that after having received the said leaflet he, Ram Lal and Sant Ram P.Ws. had held consultations with regard to the contents of the said leaflet. On that point his statement is not supported by the other witnesses. This witness had admitted that Smt. Krishna Kumari had gone to the District Board as a member on the congress ticket and that she had applied for the congress ticket for the Parliamentary seat. I shall discuss the consequence of this admission of this witness a little later. The petitioner had sought to declare this witness hostile, but her application had been disallowed. When such is the nature of evidence which the petitioner herself seeks to condemn then the petitioner cannot take advantage of a part of the statement of a witness and discard the other part of the statement of the said witness. P. W. 13 who also claimed to have received leaflet containing the aforesaid heading of leaflet Ex. 1 is an illiterate person. He claimed that the said leaflet had been read out to him by his son. He does not recognise Smt. Ganga Devi uptill now. He claimed to have received leaflets of other candidates as well and yet he does not recollect their contents. It would thus appear that all these witnesses of Behta Gopi are got up witnesses.

P. W. 12 Uma Shankar who was also a P. S. P. worker claimed that in Bighapur Bazar he had received leaflets Exs. 1 and 7 at the hands of Chiranjil Lal. He added that he had been influenced by the contents of the said leaflets and deposed further that wherever he would go to work for Smt. Krishna Kumari the voters would tell him that they would not vote for Smt. Krishna Kumari who had been turned out of the congress. Though he was a worker of Smt. Krishna Kumari yet he expressed ignorance about Smt. Krishna Kumari having or having not been in the congress. He claimed that Smt. Krishna Kumari had told him in response to his having informed her about the distribution of the said leaflet that the contents of leaflet Ex. 1 were wrong. He deposed further that the moment the said leaflets were being distributed he had proclaimed to the public by beating a Peapa that the said allegation was wrong. He also claimed that he had received leaflets of other parties but does not recollect their headings or subject matter. He appears to be deposing in the present case as he was a P. S. P. worker or else there is no truth in this deposition.

P.W. 14 Ram Kishan who is a resident of Dandpur claimed that he was a member of the Congress even now and added that he had worked for the Congress and stated further that Smt. Ganga Devi had told him that he belonged to her caste and, therefore, he should work for her. Even the petitioner in the petition had not alleged any where that verbal propaganda on the basis of caste had been made by the said respondent. Thus it would appear that this witness who claimed to be a congressite is going a step further to support the cause of the P.S.P. He claimed that Smt. Ganga Devi had come to his place along with her companions and he had worked for her. He claimed to have distributed leaflets Exs. 1 and 7 on behalf of the congress which Smt. Ganga Devi had given to him for distributing. This witness made an absurd statement by deposing that he did not know as to for whom he was appearing as a witness, nor did he know as to in which case he was appearing as a witness while making his deposition in this case. That shows that he is trying to be alien to Smt. Krishna Kumari and in his zeal to support her he is claiming to be a congress worker and having distributed the said leaflets. Though he claimed that he was a Member of the District Congress Committee for four or five years yet he did not know as to who were the Presidents of the District Congress Committee during those years. He even does not know as to what a Congress Mandal is, nor does he know as to what a Prarambhik Committee of the Congress is. His entire statement reveals that he was never in the Congress and his claim about his having distributed the said leaflets is absolutely erroneous.

P.W. 15 Nand Kishore belongs to the Socialist Party. He is an M.A. and he claimed that in the last general elections he had contested for the membership to the Lok Sabha from Rae Bareilly Pratagarh constituency against the congress candidate Sri Feroze Gandhi. He added that Sri Beni Prasad of their party was a candidate from Bhagwant Nagar constituency of District Unnao for the Legislative Assembly and the witness had worked for his aforesaid candidate in the said constituency and in that connection had gone to Bighapur Terha etc. He gave out that during his aforesaid tours he received leaflet Ex. 1 in the course of its distribution. He could not presently say as to when, where and by whom the said leaflet had been delivered to him. He gave out further that another leaflet containing the subject matter about Smt. Krishna Kumari, Sri Anwar Ahmad, Sri Tribhuwan Nath Shukla, Sri Ram Autar and Sri Bhauneshwar Bajpai having been turned out of the congress was also delivered to him. It may be pointed out here that this leaflet as such had not been placed on the record by the petitioner nor had it been formed the subject matter of the attack of the election in question. I shall deal with this aspect more specifically a little later. The witness pointed out leaflet Ex. 7 as the one which too had been received by him. This leaflet had been given to him by Chiranjil Lal at Bighapur. So far as Ex. 7 is concerned there had been no allegation in the petition with regard to any objectionable subject matter in it. The allegation pertained to its having been distributed by Chiranjil Lal an Excise Officer. That point has been dealt with heretofore. Thus it would appear that so far as this witness is concerned the only thing that emerges out of his statement is that leaflet Ex. 1 had been distributed but by whom was it distributed is not known to him. Even the respondents admit that leaflet Ex. 1 had been issued, if that were so then the same too would have been distributed. As observed earlier, it would be a different question as to whether Smt. Ganga Devi or Sri Tripathi had or had not distributed the same or had or had not given their consent, connivance etc. for its distribution. It may be that Ex. 1 may have been distributed as deposed to by this witness but mere distribution of the said leaflet by some one would not pin down the responsibility on the respondents unless the other factors mentioned heretofore are established. This witness could not say as to what work did he do during the days of election in Unnao as according to him he had worked in various villages in District Unnao. Since with regard to Ex. 1 this witness gave out that he could not say as to when, where and by whom this leaflet was delivered to him, consequently it cannot be made out as to whether

the allegation embodied in the petition pertaining to specific stations at which it was claimed to have been distributed and by the specific persons by whom it was alleged to have been distributed in the petition was this delivered to this witness or not. Thus this witness does not help the petitioner with regard to the distribution of leaflet Ex. 1. This witness also deposed that he did not know the contents of the leaflets of other parties and his explanation in that respect was that there was rush of work in the days of election and so he did not recollect the contents of other leaflets.

P.W. 17 Gaya Prasad Kurcel who also belongs to the Biradari of Smt. Krishna Kumari and is a resident of Rajendra Nagar Lucknow gave out that he was the Secretary of the U.P. Scheduled Caste Federation and in 1937 elections he had stood up as a candidate for the general seat in the Assembly for Malhiabad Constituency. He added that from the said constituency Sri Tripathi, Smt. Ganga Devi and Smt. Krishna Kumari were the contesting candidates for the Parliamentary constituency. He claimed that he had received certain leaflets issue on behalf of the Congress in those days and he pointed out leaflet Ex. 1 as one of the said leaflets which he claimed to have received three or four days before the polling day in Dhendamau by Lekhai Ram who according to the said witness was a congress worker. He deposed further that when that leaflet was delivered to him then Sri Vishambhar Dayal Tripathi and some other congress workers were sitting in a motor car. This witness also does not remember as to what other leaflets were received by him before the receipt of Ex. 1 and where and from whom had they been received by him. This witness too had not disclosed to Smt. Krishna Kumari that he had received the aforesaid leaflet and yet we find that he too has been ushered in to vouchsafe to the said allegation. This witness even does not know as to whether Lekhai Ram who had delivered the said leaflet to him is alive or dead. His statement also does not inspire confidence, inasmuch as he is not even in the know of facts as to whether Lekhai Ram who according to him was a congress worker is alive or dead and further his memory also fails him when we come to the other leaflets.

P.W. 18 Jangli Singh is yet another P.S.P. worker who is a resident of Oslan and who claimed that he had gone to Bighapur to work for Smt. Krishna Kumari and four days before the polling one man was distributing leaflet Ex. 1 there. At the utmost that this witness can prove is that leaflet Ex. 1 had been distributed but we do not know as to whether the person who was distributing the same is one of those persons whose names have been mentioned in petition as the distributors of the leaflet in question. Thus this witness too cannot establish that the leaflet in question was distributed by the respondents or any of their particular workers or agents mentioned in the petition. This witness also does not recollect the subject matter of the leaflets distributed by other parties.

P.W. 19 who is a resident of Ara Khera claimed that he had gone to Ghatampur and Bighapur to work for the Socialist party and there Chiranji Lal had distributed leaflet Ex. 1 to him. He is a barbar by caste. This witness gave out that he did not recognise Smt. Krishna Kumari nor did he know her husband. It looks odd that people who were not known to the petitioner and who had not told any one that they had seen a particular incident had been picked up from here or there to depose to the said incident. This witness who is a resident of Ara Khera was made to proceed to Bighapur to be a witness to the distribution of the said leaflet. His evidence is also not worthy of credence.

P.W. 20 Hori Lal is yet another witness who belonged to Ghatampur village where the husband of the petitioner resides and who deposes that he got a leaflet in Bhatampur at the hands of Chiranji Lal. He narrated the heading of the said leaflet as being that Krishna Kumari had been turned out of the congress and pointed out leaflet Ex. 1 as the said leaflet and claimed that the said leaflet had changed his ideas about the choice of the candidates. He admitted that he was out of employment in the days of the election. He gave out that he never saw Smt. Krishna Kumari or Peary Lal anywhere before the day he stepped in the witness-box. This statement of his discloses his zeal in the matter. Sri Pearey Lal belongs to Ghatampur. The other witnesses have deposed that Smt. Krishna Kumari did visit Ghatampur during the days of election and yet this witness claims to have not seen Smt. Krishna Kumari and her husband till before the day he stepped in the witness-box. He too had not tried to ascertain as to whether the allegation embodied in Ex. 1 was correct or not. He made a funny statement by deposing that he would read a paper and then assess its value in his mind and then a change would come in his mind without knowing as to whether the allegations contained in it is right or wrong. His entire statement discloses that he is a got up witness being under the influence of the petitioner's husband.

P.W. 21 Bhim Raj who is a resident of Kanpur and is a Chamer by caste and a Communist in views claimed that he had been touring round the constituency in question to help his communist candidate and during those days several leaflets distributed by the Congress were received by him and he added that leaflet Ex. 1 was received by him at Nawab Ganj at the hands of Badri Prasad's son. This witness also does not recollect as to where did he get the other leaflets and from whom did he get the same nor does he recollect their contents. It was suggested by the respondents that this witness is the brother-in-law of Sri Pearey Lal. The witness denied the correctness of the said allegation and yet had to make an incredible statement that he has not inquired from his wife who is still alive as to where his farther-in-law lives as he had no opportunity to make that inquiry uptill now. That would show that he is trying to conceal his kinship with Sri Pearey Lal. His evidence also sails in the same boat in which sails the evidence of the foregoing witnesses.

So far as we have been concentrating upon the evidence pertaining primarily to the leaflet Ex. 1. Here after starts the evidence pertaining to other leaflets as well. It may be mentioned here that time and again the petitioner had been directed to produce the evidence relating to a particular incident at one time so that the respondents may not be prejudiced but despite the said warning they would produce witnesses after creating gaps. A note to that effect had also been made in the course of recording the evidence of the witnesses and in the order sheet also the aforesaid direction had been embodied. By producing witnesses of a particular fact at a lapse of a few days an apprehension would be created in the mind of the other side and reasonably too that after appreciating the cross-examination of a particular witness or witnesses the petitioner would prepare other witnesses for the same point at a later stage. That contention is not devoid of force.

P.W. 22 Jan Dayal who was the Election Agent of Smt. Krishna Kumari and whose evidence has been discussed at length in connection with the counting of votes, question also claimed that in a meeting held on 15th February, 1957 at Bangermau Sri Girdhari Lal had addressed the said meeting and in the said meeting leaflets Exs 3 and 4 had been distributed. So far as the holding of the said meeting by the congress is concerned the same is admitted to but it is denied that Smt. Ganga Devi had participated in the said meeting. His evidence has already been discarded on the other issues earlier as he is a highly interested person. So far as the alleged distribution of the leaflets as deposed to by this witness is concerned the said evidence does not in any further the case of the petitioner on the point in issue, inasmuch as, he did not specify as to who had distributed the said leaflets. He merely deposed that they had been distributed on behalf of the congress. I have already observed that merely because a leaflet was distributed by the congress would not automatically render the said distribution as a corrupt practice pinning down the responsibility thereof on the particular candidates unless some other things were also substantiated. On this issue his evidence does not merit further consideration.

P.W. 24 Sheoram is a resident of Maurawan. He had to go all the way to the Purwa to be a witness to the distribution of leaflet Ex. 5 by the Congress. He claimed that during the election days he had gone to Purwa Bazar only once. He added that he had gone there to sell potatoes. He admitted that a Bazar is held in Maurawan itself. He had to concede that except for that day he never went to Purwa Bazar to sell potatoes and on other occasions he would sell the same in the Bazar of Maurawan. In cross-examination he gave out that he cannot read a leaflet and that the leaflet which he had obtained as above had been read to him by some one else and thereafter he had thrown it away. It would thus appear that though in the examination-in-chief he had gone through the documents on the record and had pointed out leaflet Ex. 5 yet when the matter came to the reading of the said leaflet he gave out that he was illiterate and had never himself read the said leaflet. It would follow that the witnesses had been told that they were to pick out leaflet placed on a particular number on the record where there were only eight leaflets placed together and the witnesses though not acquainted with the writings yet pointed out the same. I have already discussed above that some witnesses gave out the contents of certain leaflets and when asked to point out the same they pointed out wrong leaflets. All these facts lead to the irresistible conclusion that witnesses had been tutored to pick out certain leaflets as directed without their having actually received the same in the course of distribution. Again, witnesses were made to travel from one place to the other to be a witness to the distribution of certain leaflets. The evidence of this witness also is of the aforesaid type.

P.W. 25 Sant Baksh claimed to have received leaflet Ex. 1 from Smt. Ganga Devi in his village Akbar Pur Dabauli. This witness claimed that the aforesaid leaflet had an effect on his mind and yet he had not inquired from Smt. Krishna Kumari or any of her Pairokars to know as to why had she been turned out of the congress. He gave out further that he had no particular idea before he got the said leaflet as to in whose favour he would vote. He even did not know as to how many candidates were contesting for the Parliamentary Seat in question and yet he claimed to have been affected by the aforesaid leaflet. He too had not come across any person during the days of election to apprise him of his having received the said leaflet. This witness is also of the got-up type and has been procured by the petitioner to depose to the receipt of the said leaflet.

P.W. 26 Ram Swaroop who is a resident of Sheo Baksh Khara deposed that he had gone to Bhawani Khara Bazar three or four days before the polling day where Smt. Ganga Devi delivered to him leaflet Ex. 1 and leaflet Ex. 4. I have already observed above that in this case witness after witness was made to travel from his village to other places to be in the know of a certain incident. The petitioner's difficulty in that respect was that she had specified the distribution of certain leaflets at certain particular places and still she was not in a position to get witnesses of that locality and, therefore, the witnesses of other places were made to travel to the aforesaid localities to receive the leaflets there. According to this witness, he was on that day going from his school at Unnao to his village and when he happened to pass by Bhawani Khara then he received the aforesaid leaflets. This chance receipt of the said leaflets does not appear to be correct. He is also trying to show that he was not aware of the fact as to which party had summoned him to appear as a witness. This shows that he is, in fact, trying to create his presence in the said Bazar only to be a witness to the distribution of the said leaflet.

P.W. 27 Babu Lal who is a resident of Puran Khara claimed that in the said elections he had worked for Smt. Ganga Devi. He claimed to have obtained two leaflets in Purwan Khara one of which had been given to him by Smt. Ganga Devi and the other was given to him by Brahma Deo Tripathi. He pointed out leaflet Ex. 1 as the one which had been given to him by Smt. Ganga Devi and claimed that the other leaflet had been given to him by Bal Ganga Dhar Tripathi. The other leaflet pointed out by him is Ex. 3. This witness gave out that the leaflet which had been given to him by Brahma Deo Tripathi did not contain in it that votes be given to Lila Dhar Asthana and he was positive that Ex. 3 was the very notice which Brahma Deo Tripathi had given to him. The witness was made to go through the said leaflet and then he admitted that the said leaflet Ex. 3 contained in it that votes be given to Lila Dhar Asthana. That would show that his entire claim about the receipt of leaflet Ex. 3 with regard to which he had deposed that it did not contain an appeal for votes being given to Lila Dhar Asthana is wrong. This would further strengthen the belief that the witnesses had been told certain head lines of the leaflets without their being aware of the subject matter embodied in the leaflets and consequently they picked out the said leaflets but when the matter came to the subject matter embodied therein then they committed errors with regard to the same. The aforesaid circumstance would show that this witness too is a got up witness. This is the witness who had deposed that Smt. Krishna Kumari was a member of the District Board on the Congress ticket, a fact which Smt. Krishna Kumari is not prepared to concede. Similarly this witness gave out that to his knowledge Smt. Krishna Kumari had not been turned out of the congress but had herself left the congress fifteen to twenty days before the polling. I shall deal with that aspect arising out of the statement of this witness a little later. Suffice it to say for the present that so far as the alleged receipt of the said leaflets by this witness is concerned the said claim is obviously wrong in view of the fact that he committed mistakes in pointing out leaflet Ex. 3 and yet when the matter came to the disclosure of its contents then the said witness gave a conflicting answer.

P.W. 28 Kusehar Dass is yet another witness of the made up type. He claimed that he had obtained one leaflet from Smt. Ganga Devi at the gate of the court compound Unnao. He pointed out leaflet Ex. 1 as the said leaflet. He claimed to have been influenced by the contents of the said leaflet. The authenticity of this witness was exposed when he was questioned as to whether he could read a leaflet and he replied in the affirmative by saying that he could read a leaflet in bold letters and then he was asked to read the bold written leaflet Ex. 4 and the witness then gave out that he could not read the same. It would thus appear as observed earlier that witnesses had been just given out some symbols to pick up leaflet Ex. 1 and accordingly they pointed it out even seemingly trying to go through their headings and subject matters and yet when they were asked to read even the bold letters on another leaflet their knowledge of Hindi totally failed them. This circumstance goes a long way to establish that many a witness had been

tutored to point out leaflets on the basis of certain symbols contained thereon without the said witnesses having ever received the said leaflets. When such is the state of affairs no reliance can be placed upon the witnesses of this type.

P.W. 29 Mohabbat who is a resident of Taura is yet another witness who had to travel all the way from his village to Unnao on a particular day to receive a certain leaflet from Smt. Ganga Devi while he happened to stand on the outer gate of the Soldier Board Office Unnao. He pointed out leaflet Ex. 1 and the leaflet Ex. 4 as the leaflet which had been delivered to him. He gave out that on that day he had come to the Soldier Board Office to inquire as to how was he to cast his vote as he belonged to the Military Department. He claimed that when the said leaflets had been given to him then he changed his mind under their influence and did not go in to the Soldier Board to inquire about the procedure for casting ballots and went back therefrom. It is fantastic that in spite of his claim that he had intended to vote for the Congress yet on reading the said leaflets, if at all he went back to his home without inquiring about the procedure to be followed by him for casting the votes which he could have polled in favour of any Congress candidate despite his having read the said leaflets. He did not intend to vote for Smt. Krishna Kumari and he wanted to vote for the Congress candidate whosoever he or she may have been and yet on reading the said leaflets he went back as above for no rhyme or reason. He could have still voted for the Congress candidate despite the receipt of the said leaflets. He gave out that if it was written in the said leaflets that they should vote for the Congress then his mind would not have been affected in any way by the said leaflets as he had intended to vote for the Congress. The said leaflets do contain in them that votes be given to the Congress and yet this witness had gone away as above which would show that his entire statement about the receipt of the said leaflets and having been influenced thereby is a made-up affair. He had gone to the extent of deposing that when the said leaflets had been delivered to him then he had come to know that Smt. Ganga Devi was a Congress Candidate and yet this witness had gone back as above throwing away the said leaflets at the said place. As discussed above, his statement is not worthy of credence and this witness too had been made to travel to Unnao and to stand outside the Soldier Board Office Gate near the Bus Stand to receive the said leaflets and his aforesaid version of the said incident is obviously erroneous.

P.W. 30 Ram Baksh a shoe-maker is a resident of Purwa. He claimed that Smt. Ganga Devi had come to Purwa 15 or 16 days before the polling day in connection with the Ravi Dass Jaini and there she had given leaflet Ex. 1 to the said witness and Maiku Lal had given leaflet Exs. 3 and 4 to the said witness. He claimed that on going through the said leaflets he thought that Smt. Krishna Kumari had cheated the Congress and consequently she might cheat the voters as well if they voted for her and yet he deposed that he did not know if prior to the distribution of the said leaflets Smt. Krishna Kumari was or was not in the Congress and that he had no anxiety about Smt. Krishna Kumari having been turned out of the Congress. He further added that he had no anxiety whatsoever in the matter of choosing his candidate and he polled in favour of the person of his choice without having been influenced in any way. Though he claimed that he had received the aforesaid leaflets yet when he was questioned as to whether any of the said leaflets had been issued by Smt. Janki Devi then he gave out that he did not recollect about the same, Exs. 3 and 4 are the leaflets which had been issued by Smt. Janki Devi and yet this witness did not know about the said fact, although Smt. Janki Devi was a President of the Scheduled Caste Federation. When he found himself in difficulty on the point of his having no knowledge about any of the said leaflets having been issued by Smt. Janki Devi then he gave out that he had read only the top writings of the leaflets received by him and had not read the writings on the bottoms of the said leaflets and, therefore, he could not say as to who had issued the same. It would thus appear from his statement as well that the witnesses had been told the titles of the leaflets to enable them to point out the same without their knowing anything else with regard to the said leaflets and on that basis alone they were pointing out the said leaflets. The testimony of this witness too has therefore, got to be discarded.

P.W. 31 Sarju who is a resident of Saadat Nagar claimed that ten days before the polling day he had gone to Safipur where Buddha of Bangermaw had given a leaflet to him. He is illiterate and consequently his statement was confined to his narrating the heading of the said leaflet which, according to him, had been read out to him by his brother. He gave out that Buddha was working for the Congress. There is no evidence to establish that Buddha was working for any of the present respondents. This witness also admitted that he had not told any one that he had received the said leaflet as above. He did not know as to since when Buddha had been in the Congress. He did not know as to since when Buddha

was doing propaganda for the Congress. He even did not know as to how many candidates were contesting in the election. He does not know Smt. Krishna Kumari and Sri Pearey Lal and yet we find that he has been picked up from some where to depose to the aforesaid incident. He could not even say as to where the said leaflet was distributed to him two years back or 2½ years back. All these circumstances show that, as a matter of fact, he had not received the said leaflet at all and this witness too had been made to travel from his village to Safipur to be a witness to the present episode.

P.W. 32 Hamid Ahmad is a Moharrir of a Local Lawyer and he claimed that he had gone to Bangermaw four or five days before the polling and Dr. Azad of Bangermaw had given to him leaflets Exs. 1 and 2. He claimed that his brother is a talior at Unnao and that his brother had prepared a *Sherwani* for Sri Anwar Ahmad Vakil and the witness had gone to deliver the same to Sri Anwar Ahmad on that very day. He conceded that Sri Anwar Ahmad resides at Unnao and practices here and yet this witness had to travel all the way from Unnao to Bangermaw which is thirty miles from Unnao to deliver the said *Sherwani* to Sri Anwar Ahmad. He made an odd statement by deposing that when he reached Bangermaw then he did not find Sri Anwar Ahmad there and stopped on the road side near a petrol tank thinking that Sri Anwar Ahmad would come there. He had been told by some people that Sri Anwar Ahmad had gone to a place three or four miles therefrom. This shows that, as a matter of fact, this witness wanted to undertake the said journey to receive the said leaflets by the petrol tank or else there could be no sense in his having gone to Bangermaw on that day just to deliver the *Sherwani* to Sri Anwar Ahmad and then to stand by the petrol tank in the wild expectation that Sri Anwar Ahmad may come up there. He conceded that Sri Anwar Ahmad resided in his own Mohalla at Unnao and yet he had undertaken the aforesaid journey to thirty miles for delivering the said *Sherwani*. It was suggested by the respondents that the counsel to whom the witness is serving as a Moharrir is a member of the P.S.P. and consequently his services had been lent to the P.S.P. candidates to depose to the present incident. This witness admitted that he is a clerk of Sri Sheo Balak Singh Vakil ever since five years last and yet he expressed ignorance about Sri Sheo Balak Singh having been a member of the P.S.P. or having worked for the P.S.P. The way in which the said witness claimed to have gone to Bangermaw and having stood there near the petrol tank does show that when the petitioner failed to produce any independent witnesses of Bangermaw to vouchsafe to her allegation then the services of this witness were availed of.

P.W. 33 Chandra Pal Singh who is a member of the Praja Socialist Party and a resident of Unnao and a Joint Secretary of the District Praja Socialist Party gave out that all the congress candidates would have their propaganda work jointly. He claimed that during the election days he had obtained six or seven leaflets. He pointed out leaflets Exs. 1, 2 and 5 as the said leaflets. At first, he pointed out leaflet Ex. 5 as having been issued by Bal Ganga Dhar Tripathi and then changed his statement and deposed that Ex. 5 was not the said leaflet and that Ex. 71 was the said leaflet. So far as Ex. 71 is concerned no allegation about its distribution had been made in the petition. Thus that document had been ordered to be ignored. According to this witness, the leaflet Ex. 1 had been given to him by Srimati Ganga Devi in the Sadar Bazar Unnao and the leaflet Ex. 2 had been given to him by Bal Ganga Dhar Tripathi. In the election petition it has no where been given out that Bal Ganga Dhar Tripathi had distributed leaflet Ex. 2. It would thus appear that fresh allegation was being introduced in through this witness. Once again this witness took a somersault and gave out that leaflet Ex. 5 had been given to him by Srimati Ganga Devi five or six days before 25th February, 1957. In Sadar Bazar Unnao. I have already discussed above that once he had said that leaflet Ex. 5 had been received by him and he had again gone back from the said statement and had deposed that it was not Ex. 5 but Ex. 71 which had been received by him and yet towards the end of his examination in chief he again deposed that Ex. 5 had been received by him as above. These conflicts in his statement show that he is not sure about anything and as he happened to be a member of the P.S.P. and a Secretary of the said organisation, consequently in his zeal to support the cause of the petitioner he is making the deposition in question. This witness deposed further that even after the issue of the aforesaid leaflets from the side of the Congress the P.S.P. had not issued any leaflets in response thereto. If the allegations embodied in the leaflets, mentioned above, were erroneous then, in all probability, the P.S.P. would issue contradiction to the same. Though this witness knew the headings and titles of the leaflets of the Congress yet when questioned about the headings etc. of the leaflets issued by the Socialist Party and received by him he had to depose that he did not recollect the same. He is a highly interested witness and the aforesaid circumstances do reveal, that he has come to

depose in the present case to help the petitioner or else his claim about his having received the said leaflets in the aforesaid circumstances is wrong.

P.W. 34 Mahabir Prasad is a resident of Pura Khera. He claimed that Brahma Deo Tripathi, Smt. Ganga Devi and two or three other persons had come to their village to participate in the Ravidas Jainti and that Smt. Ganga Devi and Brahma Deo Tripathi had addressed the said congregation. One can understand Smt. Ganga Devi addressing the said Jainti of the Ravidas people, but Brahma Deo Tripathi could have no reason to participate therein. However, according to the said witness three leaflets had been distributed there. He pointed out leaflets Exs. 1, 3 and 4 as the said leaflets, which had been given to him by Smt. Ganga Devi. He gave out that formerly he was of the view that he should vote for the Congress, but after reading the said leaflets he thought that he would not vote for the Congress. It does not stand to reason that he should cease to vote for the Congress after reading the said leaflets as the said leaflets did not contain anything against the Congress organization. The witness himself deposed in cross-examination that even after the receipt of the leaflets Ex. 1 he was of the view that he would vote for the Congress and thereby he contradicted his earlier statement. I have already observed above that the petitioner had been trying to put up a witness of one incident on one day and another witness of the same incident on another day after an interval so that the subsequent witness may make out the deficiencies in the statement of the earlier witness. Same was the case with regard to this witness. Babu Lal P.W. 7 who also deposed to the said incident earlier had claimed the distribution of only two leaflets and this witness went a step further. Babu Lal had deposed that Smt. Krishna Kumari had herself left the Congress 15 to 20 days before the Polling, and this witness P.W. 30 was put in to fill in the gaps. His evidence too is of the same stereotype.

P.W. 35 Sheoram, who is a resident of Deora Kalan claimed that eight days before the polling he had gone to the bazar of Magarawara where leaflet Ex. 1 had been given to him by Bal Ganga Dhar. He gave out that the heading of the said leaflet was "Krishna Kumari Ko Vote Na Diyiye". After having given the aforesaid heading he pointed leaflet Ex. 1. The aforesaid heading is nowhere contained on Ex. 1. That shows how the witnesses have been culled together to depose to the various incidents. This witness too had to undertake journey to Magarawara to receive the aforesaid leaflet. He gave out that he did not recollect as to what was printed in the said leaflet. He further deposed that another leaflet had been received by him on the road side at Unnao in front of the courts. He pointed out leaflet Ex. 5 as the said leaflet which according to him was given to him by Smt. Ganga Devi. He does not remember as to what were the contents of the leaflet Ex. 5. It appears that this witness who is a resident of Deora Kalan Police Station Ganga Ghat was once made to go to Magarawara Bazar and again to roam about on the roads of Unnao to obtain the said leaflets here or there or else he had in fact received no leaflets. He had added that the leaflet Ex. 1 did not have any effect on his mind. All these circumstances show that he is a got up witness.

P.W. 36 Hemraj claimed that two days before the polling day he had gone to Garhi Bazar where Sewa Ram had delivered to him a leaflet contained in bold letters that Smt. Krishna Kumari had been turned out of the congress. In the petition it had nowhere been alleged that Sewa Ram had distributed the said leaflet in Garhi. Consequently the evidence of this witness on the said point was ordered to be rejected. It may however be pointed out in the case of this witness as well that though he had also pointed out leaflet Ex. 1 yet when asked to read the contents of the leaflets he deposed that he could not do so even if they are shown to him. It has already been observed earlier that there are a number of witnesses in this case who narrated the titles of the leaflets alleged to have been received by them, and who pointed out certain leaflets and yet when asked to read the said leaflets they deposed that they could not do so.

P.W. 38 Ziauddin resident of village Nainamau District Barabanki who had been a worker of Smt. Krishna Kumari in the elections in question deposed that he had gone to work for Smt. Krishna Kumari at various places and when he was working as above in Malhiabad then Sri Vishambhar Dayal Tripathi had given to him leaflets Exs. 1 and 7. I have already discussed the evidence of this witness at length in connection with the issue pertaining to counting of votes etc. and have held that he is a highly interested witness who though a Government Servant had yet come to appear as a witness just at the bidding of Sri Misra the counsel for the petitioner who, according to this witness, was a sympathiser of the P.S.P. His evidence needs no further discussion and has got to be discarded.

P.W. 40 Ram Charan who is a peon in the courts at Unnao and who belongs to the Biradari of Smt. Krishna Kumari deposed that he had received two leaflets at

Unnao at the shop of Pancham Lal who had given the same to him. He pointed out leaflets Exs. 3 and 4 as the said leaflets. He claimed that when he was proceeding to the court he just chanced to pass by the aforesaid shop when the said leaflets were given to him. He did not have any talk with any one about the said incident. This witness had deposed that in both the said leaflets pointed out by him the symbols of the bullocks were there and yet when we look at Ex. 3 we do not find any such symbol printed thereon. This is another instance of the witnesses being asked to remember the symbol of bullocks while making depositions or else the said witnesses had actually not witnessed the incidents in question. The evidence of this witness too is of the aforesaid type.

P. W. 41 Gur Charan is a resident of Mohalla Puran Nagar Unnao. He claimed that eight or ten days before the polling he was sitting in front of the Post Office Unnao at the shop of his brother who is a shoe maker and it was there that he got the said leaflets from Smt. Ganga Devi in whose company Pancham Lal and Maiku Lal were there. He pointed out leaflets Exs. 3 and 4 as the said leaflets. The witness gave out that in the said two leaflets votes for Smt. Ganga Devi had been demanded. His attention was drawn to leaflet Ex. 3 wherein votes for Lila Dhar Asthana had also been demanded and through it votes had also been demanded for Sri Vishambhar Dayal Tripathi and he was questioned as to how did he say that the leaflets obtained by him contained a demand for votes for Smt. Ganga Devi alone and he gave out that he did not want to reply the said question and could not reconcile the said conflict. Even in the other leaflet a demand for Sri Tripathi had also been made. It would thus appear that this witness had been told merely to depose as against Smt. Ganga Devi and consequently he confined his statement to the aforesaid extent about the said leaflets containing the demand in favour of Smt. Ganga Devi alone though the said statement was erroneous. When such is the evidence of this witness no reliance can be placed upon it.

P. W. 44 Kanhaiya Lal is a resident of Ganga Ghat. He was a worker of the P.S.P. He claimed that leaflets Exs. 4 and 5 had been delivered to him by Smt. Ganga Devi. In the election petition it had no where been specified that Smt. Ganga Devi had herself distributed the said leaflets at Korari Kalan and on that ground alone the testimony of this witness has got to be rejected. Though this witness claimed at one stage that it was in the course of his sojourns while working for the P.S.P. candidates that he had received the said leaflets yet later he gave out that on the day when he obtained the said leaflets he had gone to Korari Kalan to the house of the father-in-law of his brother and had not done any propaganda in Korari Kalan. He could not assign any reason as to why he had not done any propaganda for his candidates at Korari Kalan. His statement about the way in which Sri Tribhuwan Singh P. S. P. candidate asked him to distribute his leaflets is rather surprising. He gave out that he was not in the P. S. P. Party and was not even acquainted with Sri Tribhuwan Singh and yet when on a certain day he was passing on the road at Magarwara then Tribhuwan Singh stopped him and had handed over to him his leaflets for distribution without having had any further talk to him. It appears that this witness who was a worker of the P. S. P. is coming forth to support his party's cause without his having received the said leaflets.

P. W. 46 Sher Bahadur Singh who is a Thakur had also worked for the P. S. P. Party in the said elections. He claimed that during the election days he had received leaflets Exs. 1 and 7 in Kankaha Bazar from Smt. Ganga Devi. He also gave out that the Congress workers were demanding votes for all the candidates. In the election petition Kankaha has not been specifically shown as the place where the said leaflets had been distributed. At one stage he gave out that on behalf of ten candidates contesting the said elections leaflets had been distributed and he had received the same. Later when he found that he would be asked about the contents of the said leaflets then he resiled from the said statement and gave out that his aforesaid statement was wrong. Though he admitted that he had received one leaflet of the Socialist Party yet he could not give out its heading nor could he give out the headings of the other leaflets received by him. This witness had also never communicated to any one about his having received the said leaflets. Thus his evidence in the circumstances referred to above is also not dependable.

P. W. 47 Kashi Ram is a resident of Amethi. He claimed that ten or twelve days before the polling Ganga Devi had delivered to him leaflet Ex. 4 at Amethi. He is also a shoe maker. This witness deposed that it was in the month of February that he received the said leaflet. When asked to name all the months

of the English Calendar he failed to give out the month of September. He does not know how many days are there in the month of October. He is also a chance witness who claimed that at that opportune moment he had gone to the Bazar to purchase the vegetable when the said leaflets were delivered to him. When asked to give out the subject matter of the said leaflet the witness gave out that he had not read the same, consequently he cannot give it out. From his statement too it appears that he is a got-up witness.

P. W. 48 Mahabir is another resident of Amethi who claimed that eight or ten days before the polling Smt. Ganga Devi had given to him a leaflet in the Amethi Bazar. He described that on the top of the said leaflet a symbol of a pair of bullocks within a circle and a pair of bullocks without a circle were printed thereon and on it was printed at the top that Smt. Krishna Kumari had been turned out of the congress and on the foot or it was printed the name of Bai Ganga Dhar Tripathi as the issuer thereof. He also gave out the contents of the said leaflet in detail and pointed out leaflet Ex. 1. He claimed that he has read upto III Class and yet when the matter came to the reading to the contents of the said leaflets this witness also deposed that he would be able to read only those words which were written in bold letters but could not read those letters which were written in the body of the said leaflet as his eye-sight was weak. After having made the said statement he too took a somersault and deposed that his eye-sight was sound and then gave out another explanation by deposing that as he had ceased to read since long and the practice of reading had discontinued, consequently he could not presently read the printed matter in the body of the said leaflet. All these things would show that this so-called semi-literate person had not received any leaflet but has been told the heading of the said leaflet to enable him to point it out. He also claimed that Smt. Krishna Kumari had never met him and he had never told any one of her workers that he had obtained the said leaflet as above. Again, it is to be found that whereas this witness claimed that Smt. Ganga Devi had distributed leaflet Ex. 1 in Amethi, the earlier witness claimed that it was leaflet Ex. 4 which had been distributed by her in that village.

P. W. 49 Ram Autar resident of Simramau gave out that six or seven days before the polling he had gone to Kakori Bazar where Sri Vishambhar Dayal Tripathi had given to him leaflet Ex. 6. In the election petition it has not been specified that at the said bazar Sri Tripathi had distributed the said leaflet. So on that ground the evidence of this witness falls through. This witness did not know Smt. Krishna Kumari from before nor did he ever tell her or any one else about his having received the said leaflet. This witness had also to travel to Kakori bazar to get the aforesaid leaflet. The evidence of this chance witness is not at all reliable.

P. W. 50 Sat Narain is another resident of Simramau. He gave out that six or seven days before the polling he was standing on the canal side near his village when Vishambhar Dayal Tripathi had come there and had given him leaflet Ex. 6. He claimed that during the elections he had received two other leaflets but he does not recollect the headings of the other leaflets, nor does he recollect as to which party or candidate the said leaflets pertained. He claimed that he was not interested in any party or candidate and yet he recollects the heading etc. of leaflet Ex. 6 but with regard to other leaflets he is absolutely oblivious. He too had never met Smt. Krishna Kumari after the receipt of the said leaflet and had never disclosed to her about the said affair. It is not understandable as to how Smt. Krishna Kumari got hold of this witness to depose to the said affair when he had not told any of her workers about the said incident. So the evidence of this witness too is of no avail to the petitioner.

P. W. 55 Chaudhari Khazan Singh was a candidate for the Legislative Assembly from Unnao Constituency for the P. S. P. Party and had been returned as a successful candidate. He deposed that the election work of the Lok Sabha candidate and the Assembly candidates of the Congress was carried on jointly. He stated further that during the said elections many leaflets were distributed by the Congress and he too had obtained three or four leaflets which were distributed by the Congress. He pointed out leaflet Ex. 2 as having been received by him but he did not recollect as to who had delivered the said leaflet to him. The other leaflets pointed out by him as having been received are leaflets Exs. 5 and 3. He stated further that he had obtained another leaflet as well which was issued by Arva Nandan and Muneshwar Singh but he did not recollect its headings and deposed that he was not sure if he would be able to point it out or not. The petitioner's counsel had asked the witness to go through the record and to point out if the said leaflet was on the record and the witness after going through the

He ord stated that he could not point out the said leaflet from the record. In the first place, it is to be noted that this witness had not deposed as to who had delivered the said leaflets to him. It is quite probable that the said leaflets may have been distributed by some one but unless the same had been distributed either by the respondents or by their workers with their consent, connivance etc. the distribution thereof, if at all, is of no consequence. So the evidence of this witness even if it be believed *in toto* does not advance the case of the petitioner. Although in the examination-in-chief the witness had deposed that he had received leaflet Ex. 2 yet in the cross-examination he gave out that the said leaflet which contained on it the names of Arya Nandan and Muneshwar Singh as its issuers was not obtained by him at all and that his earlier statement about his having received the said leaflet was wrong. He gave out that the leaflet which had been issued by Arya Nandan and Muneshwar Singh and had been received by him was not the leaflet Ex. 2 and added that in that leaflet the heading was dissimilar from the heading of the leaflet Ex. 2. Thus it would appear that the said witness is not very sure about the identity of the leaflets received by him. However, as observed earlier the fact that this witness is not aware of the persons who had distributed the said leaflets to him does not improve the case of the petitioner in any way. This witness had further deposed that the P.S.P. Party to which he belonged had also distributed leaflets but he does not recollect the headings of the leaflets issued by his party. He admitted that he had propagated for the P. S. P. Party Candidates including Smt. Krishna Kumari. As discussed above the evidence of this witness does not help the petitioner at all.

P. W. 56 Bhagu Singh resident of Banthara gave out that seven or eight days before the polling day Sri Vishambhar Dayal Tripathi had come to Banthara Bazar and had delivered to him leaflet Ex. 1. With regard to this witness evidence had been led by the respondents to establish that he was also a P. S. P. worker. D. W. 19 Sunder Lal resident of Banthara had deposed that Bhagu Singh was working for the P. S. P. in the said elections. The solitary evidence of this witness on the aforesaid point does not establish that Sri Vishambhar Dayal Tripathi had distributed the said leaflet to him. It may be mentioned here that Sri Vishambhar Dayal Tripathi had denied having distributed the said leaflet at all.

P.W. 57 Sumer Singh of Kankaha who had worked for the P.S.P. Party claimed that leaflets Exs. 1 and 7 had been obtained by him. Ex. 1 had been delivered to him by Smt. Ganga Devi in Mohan Lal Ganj and the other leaflet had been given to him by Maiku Lal in Gosain Ganj. As pointed out earlier P.W. 46 Sher Bahadur Singh had been examined by the petitioner on an earlier date with regard to the said incident and this witness had then been withheld to be produced at a belated stage to cover up the flaws of the earlier witness. This witness too had never told any of the workers of Smt. Krishna Kumari that he had received the said leaflet and yet he too has been picked up from some where to depose to the present incident. His interest in the said party is obvious.

P.W. 61 Ram Bharosey of Osian deposed that two days before the polling he had come to Unnao and Sewak Ram had given to him one leaflet, the heading whereof was "vote for the Congress". He pointed out leaflet Ex. 5 as the said leaflet. He admitted that he lives close to Ghatampur so this witness who belonged to the village of Sri Pearey Lal had been made to travel all the way to Unnao to receive the aforesaid leaflet on a particular day.

Besides the aforesaid P.Ws. the petitioner tried to collect help from D.W. 1 Bechu Lal and D.W. 2 Chhotey Lal who had been put in by Sri Tribhuwan Singh to lend support to the cause of the petitioner. Bechu Lal claimed that he had distributed several leaflets on behalf of the Congress in the days of election. He pointed out leaflets Exs. 1 and 4 as the leaflets which were distributed by him. He did not recollect the contents of the other leaflets which he had distributed. He claimed that he had distributed the said leaflets for Smt. Ganga Devi and Sri Tripathi. He is the witness who has been produced by Tribhuwan Singh as an all rounder witness to help the petitioner. He deposed to all the phases of the petitioner's case. I have already discussed his evidence in connection with the other issues and have held that his testimony is not at all believable. He is the person who went to the extent of recognising signatures in English of Sri Vinod Behari Varma the then A.D.M. though this witness does not know even the alphabets of the English language. As mentioned above, the services of this witness were utilised by the petitioner to fill up all the lacunae and the mode of eliciting out facts out of the mouth of this

witness as adopted by the counsel for the petitioner was that in the examination-in-chief conducted by the counsel for Tribhuwan Singh this witness deposed practically nothing and the learned cross-examiner for Smt. Krishna Kumari then put leading questions to him on all the various allegations to which this witness replied in the affirmative. The way in which this witness was made to answer the queries of the counsel for the petitioner does show that he was more a witness for the petitioner rather than for Sri Tribhuwan Singh whose counsel had asked practically nothing from this witness. His evidence needs no further comments.

D.W. 2 Chhotey Lal like D.W. 1 claimed that he too was a worker of Congress. He is a resident of Mallawan and he claimed that he had distributed three leaflets for the Congress and the said leaflets are Exs. 1, 5 and 4. He also deposed to the propaganda of the respondents 1 and 2 having been carried on jointly. This witness claimed that in 1956 he had sought congress ticket for Legislative Assembly from District HarDOI but he did not get the said ticket. Though this witness claimed that he had been working for the Congress candidates during the said election yet we find from the documentary evidence that this witness is, in fact, a worker of Smt. Krishna Kumari. In the course of the present election petition this witness had been serving summons on the witnesses of the petitioner for her. He denied having done so and when he was confronted with the summons papers Nos. D2/83/1 and 283/2 then he had to admit that the writings encircled red on the said leaflets were his. These writings pertained to the service of the summons on the witnesses of the Petitioner by this witness. In the said reports this witness had scribbled that he had done the *Tamil* of the said summons and now he had the audacity to depose that he had used the word "Tamil" without knowing the meaning of the said word and he had merely gone in the company of Gajadhar to effect the service. This documentary evidence establishes beyond doubt that this witness belongs to the camp of Smt. Krishna Kumari and was produced as a D.W. through Sri Tribhuwan Singh so that the counsel for the petitioner may get out of him things of their choice by putting leading questions to him. Thus his testimony does not help the petitioner.

The respondents 1 and 2 had also produced a number of witnesses of various stations to show that no distribution of the aforesaid leaflets had been made at the said stations by Sri Tripathi and Smt. Ganga Devi or by any of their workers and agents as claimed to by the petitioner. I need not discuss in detail the evidence of the said D.Ws. as the petitioner has herself failed to substantiate the distribution of the aforesaid leaflets in the manner claimed to by her.

To sum up the evidence produced by the petitioner it may be observed that many a witness produced by her had described the titles of some of the leaflets as having been received by them but when the matter came to the reading into the said leaflets then the said witnesses could not read through the said leaflets from which the obvious result that follows is that they had been tutored to take to their memory the headings of certain leaflets but they could not actually identify the said leaflets. Some of them when asked to point out the said leaflets had eventually to concede that they were illiterate. Another circumstance which emerges out of the evidence produced by the petitioner is that most of the witnesses were picked up from the villages where the petitioner resided or where her husband resided and the said witnesses belonged to the *Biradari* of the petitioner. Again, a large number of witnesses deposed that they had never met Smt. Krishna Kumari nor had they told any of her workers that they had received any leaflets and yet they had been ushered in as P.Ws. some how or other by the petitioner. Some witnesses who claimed to have received leaflets from Smt. Ganga Devi when asked to point her out failed to do so. Witness after witness had been made to travel to far off villages to be in a position to receive certain leaflets at the hands of the respondents and no witness of the locality where the said distribution was claimed to have taken was produced. It appears that the petitioner having failed to secure any witnesses from a particular locality sought the help of witnesses belonging to distant localities who were under her influence to depose that they had gone on a particular day as a chance witness to a particular place and had there happened to receive a certain leaflets. It is also significant that out of near about fifty witnesses who deposed to the distribution of leaflets only four or five claimed that Sri Tripathi had himself distributed the leaflets while most of the remaining witnesses claimed that Smt. Ganga Devi had distributed the leaflets to them. It was tried to be given out that Smt. Ganga Devi was wandering on road sides here or there and handing over leaflets to one and all though she was a stranger to this District. It is again odd that though the witnesses claimed that by reading leaflet Ex. 1 they had come to believe that Smt. Krishna Kumari who had been turned out of the congress was not a dependable person yet not a single witness ever cared to inquire from Smt. Krishna Kumari or from any of her workers as to whether the said allegation was true or not. Even the witnesses belonging to her village never tried to inquire from her about the truth

or otherwise of the said allegation. It is again surprising that witness after witness went on committing out the headings of the leaflets in question and yet they did not recollect the heading of the other leaflets received by them from the other parties, so much so, that the witnesses hailing from the P.S.P. Party itself did not recollect the headings of their own leaflets and yet the headings of the leaflets in question were kept in their memory. Some of the witnesses could not say that a particular person at a particular place had distributed a particular leaflets to him & they merely deposed having received certain leaflets without specifying the aforesaid details. That being so, it could not be ascertained as to whether their deposition would be covered by the contents of the election petition, inasmuch as, unless they had received the said leaflets at the stations specified in the petition and from the persons mentioned in the petition their evidence would be of no avail to the petitioner. Another feature of the evidence led by the petitioner is that time and again she had been warned to produce evidence with regard to a particular station simultaneously yet she did not abide by the said direction, and produce one witness on a particular day on one incident and on some other day again brought in another witness of that incident which would show that time was being gained by the petitioner to prepare witnesses on the same incident. I have already pointed out various contradictions which find place in the statements of witnesses deposing to the distribution on a particular station which also show that there is no truth in the distribution of the leaflets as claimed to be by the petitioner. Interested witnesses were produced in for getting support in the matter in issue. All these circumstances show that the petitioner's claim about the distribution of the said leaflets in the manner referred to above was wrong and has not been fully substantiated. The husband of the petitioner has been a M.P. on the congress ticket for the last five years. The brother of her husband too has been a member of the Legislative Assembly for the said period. She has herself been a member of the District Board until now ever since long. Thus the petitioner's influence could inevitably be there and it would not be difficult to pick up a witness or two from this or that village to vouchsafe according to her bidding. I do not mean to ignore the fact that the respondents too could have chosen witnesses likewise to vouchsafe to the negative, but the onus being there on the petitioner she has to discharge the same beyond reasonable doubt with a reliable evidence and when she fails to do so then she has to bear the consequences.

The respondents 1 and 2 had also produced evidence to disprove the aforesaid allegations of the petitioner. D.W. 3 Sheo Pal Singh who is a cloth vendor and a representative of the Central Bank for Mohan Lal Ganj claimed that in the days of election he had not seen Smt. Ganga Devi in the Bazzars of Mohan Lal Ganj and Kankaha doing any propaganda or distributing leaflets in the said Bazzars. D.W. 4 Brindaban deposed that he had never seen Smt. Ganga Devi distributing leaflets at Unnao in the said days. D.W. 6 Shyam Behari also claimed that Smt. Ganga Devi had not distributed leaflets in Mohan Lal Ganj. D.W. 7 Dwarka Prasad deposed that in Amethi and Gosalganj the said lady had not distributed any leaflets. According to D.W. 8 Kirpa Shankar Smt. Ganga Devi had never visited Korari Kalan. D.W. 9 Kishen Ballabh Pandey is the witness to the non-distribution of any leaflets by Smt. Ganga Devi at Ganga Ghat Bazar. D.W. 10 Laxmi Narain Shukul an officiating Principal of an Inter College at Purwa deposed that Smt. Ganga Devi had not distributed any leaflets at Purwa. D.W. 11 Baiju who is a Kureel and belongs to Raidass Biradari gave out that Smt. Ganga Devi had not attended the Jaintis in Purwa and Mirri. D.W. 12 Gaya Prasad claimed that in the election days Ganga Devi had not visited Bighapur Bazar. D.W. 13 Ganga Narain who is also an M.A. gave out that he had never seen Smt. Ganga Devi distributing leaflets at the shop of Pancham Lal or at any other place at Unnao. D.W. 14 Buddha Lal who is a Vice-Chairman of Bangermou Town Area Committee deposed that Smt. Ganga Devi had not visited Bangermou in the days of election. He admitted that a certain meeting had been addressed in Bangermou by Sri Girdhari Lal but it is wrong that the said witness had himself distributed any leaflets in the said meeting nor had he seen Smt. Ganga Devi and Sri Tripathi there in the said meeting. It was urged on behalf of the petitioner that it is not credible that Sri Girdhari Lal would address a meeting at Bangermou and Smt. Ganga Devi would yet fail to attend the same. Smt. Ganga Devi had deposed that on the day when the said meeting was held at Bangermou she was presiding over a certain meeting at Kanpur and as such did not go to the aforesaid meeting. Sri Girdhari Lal had addressed the said meeting for the various candidates and it was not essential that every congress candidate should be present in the said meeting. The explanation offered by Smt. Ganga Devi is in no way incredible. D.W. 15 Shyam Sunder who claimed to have worked in the said elections for the P.S.P. candidates and was a Polling Agent for Sri Anwar Ahmad a P.S.P. candidate and was a polling agent for Smt. Krishna Kumari as well deposed that he did not see Smt. Ganga

Devi at Bangermau or Saffpur in the said days. D.W. 16 Sri Ram Pal Triwedi who is a President of the District Congress Committee Lucknow and an M.L.A. from Malhiabad Constituency gave out that on 6th February 1958 Sri Vishambhar Dayal Tripathi and Smt. Ganga Devi had come to Malhiabad as Sri Pant Ji had come there to inaugurate the election campaign of that constituency and that no leaflets had been distributed by Sri Tripathi at Malhiabad or Mal at that occasion. This witness further deposed that Bhagu Singh P.W. o' Banthara was a worker of the P.S.P. D.W. 17 Ram Prasad also deposed that Sri Tripathi had not distributed any leaflets at Mal. D.W. 18 Chandrapal claimed that Sri Tripathi had not visited Kakori. With regard to Banthara D.W. 19 Sunder Lal deposed that Sri Tripathi had not visited the said village. D.W. 21 Raghubar Dayal deposed that in the days of election Smt. Ganga Devi had not visited Ghatampur and Behta Gopl. D.W. 22 Badri Prasad who is a resident of Nawab Ganj denied having done any work for the Congress in the said elections nor did his son, according to him, work for Smt. Ganga Devi. He denied that Bhimraj P.W. had visited them during the elections. Thus he tries to contradict the claim of the petitioner's witness Bhimraj about his having received a leaflet at Badri Prasad's shop. D.W. 23 Smt. Ganga Devi and D.W. 24 Sri Tripathi had also denied the distribution of the said leaflets. I have already observed above that there is no necessity for probing into the evidence of the respondents 1 and 2's witnesses to find out as to whether they are more credible than the petitioner's witnesses, inasmuch as, I have already discarded the evidence of the petitioner's witnesses. It was claimed by the petitioner that with regard to some of the leaflets the issuing thereof had been admitted by the respondents 1 and 2, consequently the distribution thereof should be inferred inevitably. It is true that the leaflets which had been issued by some one may have also been distributed by some one but the question would be as to whether any particular leaflet had been issued by the respondents 1 and 2 by any persons with their consent, knowledge or connivance. Other congress candidates were there in the field for the Legislative Assembly. Some of the leaflets did pertain exclusively to the said candidates and if the same had been issued by some one for the benefit of those Assembly candidates then unless it is proved that the said leaflets had been distributed by the respondents 1 and 2 or by their workers and agents with their consent etc. then the responsibility of such leaflets cannot fall down on the said respondents. Having held that the distribution of the said leaflets as alleged to be by the petitioner has not been established, now I come down to the other aspects of the said leaflets. I shall take up the said leaflets one by one.

Leaflet Ex. 3.—This leaflet has its title as "Sabhi Chhote Bhaiyon Se Appeal". It was issued by Smt. Janki Devi who had described herself as Adhayaksha of Scheduled Caste Federation Uttar Pradesh. Through this leaflet an appeal was made to the untouchables and backward class people that they should cast their votes in favour of Sri Lila Dhar Asthana who was a Congress candidate. It had been embodied therein that the said lady had asked the said persons as an Adhayaksha of the said Federation to vote for the Congress. It had been embodied further in the said leaflet that Sri Asthana had worked always for the upliftment of the Harijans and whenever she had approached Sri Asthana with regard to the difficulties of Harijans then Sri Asthana had always helped her in that matter. It was further contained in the said leaflet that the candidate who was standing against Sri Asthana was canvassing votes on the basis of 'Ahirvad' (or on the basis of being an Ahir) and it was further contained in the said leaflet that canvassing of votes on the basis of Ahirvad was detrimental to the people of the Biradari of Smt. Janki Devi and for the people residing in Unnao District as well as for the whole country. It was further contained in the said leaflet that looking at the present condition prevailing in the country all the Harijans and backward classes should vote for the Congress so that the "Sampradaikta" be annihilated from the country and the country and Kashmir may be saved. It was also contained in the said leaflet that for the Parliament votes be given to Sri Tripathi and to Smt. Ganga Devi who was described in the said leaflet as "Hamari Biradari Ki Neyatri". The objections raised to the said leaflet are two-fold, firstly, that it was a false statement of fact that Smt. Janki Devi was the Adhayaksha of the said Federation and secondly that she had issued the said directions in the capacity of an Adhayaksha and had further described Smt. Ganga Devi as the Leader of the Biradari and it was thus contended that an appeal on the basis of caste and community had been made. So far as the first objection is concerned the said objection is negated by the statement of P.W. 16 Tilak Chand Kureel who had been produced by the petitioner herself. The said witness appearing as a P.W. described himself as a Chairman of the said Federation. He claimed that ever since 1942-57 he was Chairman of the said Federation. In the examination-in-chief itself, this witness had given out that Smt. Janki Devi is the President of

the U.P. Scheduled Caste (Women) Federation and that he himself is the Chairman of the Gent section of the said Federation whereas Smt. Janki Devi is the President of the Ladies Section of that Federation. The word in which Janki Devi is described on the said leaflet is the "Adhayaksha" which would itself show that she was the Lady President. She could rightly describe her as Adhayaksha as according to the said P.W. she was the President of the Ladies Section of the said Federation. The said P.W. had admitted that he could not describe himself as the Adhayaksha of the said Federation. Thus no false statement had been made in the said leaflet while describing Smt. Janki Devi as the Adhayaksha of the said Federation. Coming to the other objection it is to be observed that the same is baseless, inasmuch as a reading of the subject matter contained in the said leaflet would show that it was an appeal asking the people of the Biradari of Smt. Janki Devi to be beware against the propaganda made on the basis of community, i.e., on the basis of "Ahrivad". She was cautioning the people of her Biradari by saying that they should not be influenced by the propaganda of the aforesaid nature. On the other hand, while seeking votes in favour of the congress candidate Sri Asthana she had reminded the people of backward classes about the services rendered by the congress to the upliftment of the said classes. Even if she issued the aforesaid warning or request then that was not a directive on the basis of caste and community but was purely an appeal on the political basis in the name of the services of the congress rendered to the backward classes. It would thus be wrong to say that systematic appeal on the basis of caste and community had been circulated through the said leaflet. Similarly describing Smt. Ganga Devi as the Nayatri of the Biradari did not amount to making any appeal on the basis of caste and community. A certain person who is a leader of a certain political party and who belongs to a particular class can very well be described as the Neta or Neyatri of the said Biradari. It had no where been given out in the said leaflet that votes be given to Smt. Ganga Devi on the basis of caste or creed or community. The entire reading of the said leaflet would show that this leaflet condemned propaganda on the basis of caste and community and contained an appeal on political basis. Thus even if it be assumed that the said leaflet had, in fact, been issued by Smt. Janki Devi then there was nothing wrong in the said leaflet. It may be mentioned here that it has not been proved by any evidence that it was Smt. Janki Devi who had, in fact, issued that leaflet. P.W. 42 Laxmi Narain Shukla Manager of the Unnao Printing Press had deposed that leaflets Exs. 2, 3, 5 and 6 had been printed at their press. He added that Sri Lila Dhar Asthana had got printed leaflet Ex. 2 and it was he who had obtained the delivery thereof after paying for the same. I shall deal with this leaflet a little later. The witness did not recollect as to who had got the leaflet Ex. 3 printed at their press and as to who had got the delivery of the said leaflet and as to who had paid for the same. With regard to the leaflets Exs. 5 and 6 also the said witness added that the same had been got printed by Sri Lila Dhar. So there is no evidence that Smt. Janki was, in fact, the issuer of the said leaflet. Sri Lila Dhar in whose favour the leaflet Ex. 3 primarily contained an appeal for votes would certainly have got the said leaflet printed for his benefit though towards the lag end of the subject matter contained in the said leaflet a side appeal had also been made for Sri Tripathi and Smt. Ganga Devi as well. Since it has been held above that this leaflet did not contain in it any objectionable subject matter no further discussion about the said leaflet is needed and it is held that even if it be assumed that the said leaflet had been issued and distributed then too no corrupt practice was committed by the respondents 1 and 2 or any of their workers and agents by distributing the said leaflet.

Leaflet Ex. 4.—The title of this leaflet is to the effect "Smt. Ganga Devi and Shirdhey Tripathi Ji Hamare Neta Hain". It purports to have been issued by Smt. Janki Devi Adhayaksha of the aforesaid federation and by Brahma Deo Tripathi Secretary Zila Harijan Sewak Sangh Unnao and Sri Pancham Lal Kureel Mantri Zila Dalit Varg Sangh Unnao. So far as the issuing of this leaflet is concerned the same is not denied to by the respondents in question. A reading of this leaflet also discloses that no appeal on the basis of caste and community had been circulated through it. On the other hand, it was an appeal against the communal and caste propaganda. Through this leaflet all the Harijan people had been asked to vote for the congress. When people of a certain community are asked to vote for the congress then that by itself would not amount to an appeal on the ground of caste and community. People of a certain set or community may be requested to vote for a certain political party because of the services rendered by the said party politically to the country, to the nation and even to a particular community. In the said leaflet the objectionable portion pointed out by the

learned counsel to the petitioner was that Smt. Ganga Devi had been described as a person belonging to "our Biradari". In the said leaflet it has been embodied that "Smt. Ganga Devi Hamari Biradari Ki Parhi Likhi Sushikhhit Aewam Karmat Karya Katri Hain. Inohon Ne Tatha Inke Pariwar Ne Desh Aur Jati Ki Larayon men Barbad Kardiya". These words would not convey a communal appeal. In the said leaflet it is further contained that Sri Tripathi had done every thing possible for the upliftment of the untouchables and scheduled caste people and that it was he who was responsible for removing the untouchability "Chhuchhoot Ka Bhoot" from District Unnao and that he never cared for inter-dining with the untouchables and that Sri Tripathi had taken a pledge that in the District of Unnao he would not allow any untouchability to exist and that votes be given to such persons who are doing such a work for the upliftment of Harijans so that there may be welfare of the District of the community and of the children of Harijans. From the aforesaid reading it is obvious that the services of Sri Tripathi were eulogized as he had tried to uproot untouchability. So this was not an appeal on the ground of caste and community but, on the other hand, it was a condemnation against the caste and community propaganda. So this leaflet too does not bring in any corrupt practice.

Leaflet Ex. 5.—This leaflet purported to be issued by Ram Adhin Singh Yadav M.L.A. to the voters to vote for the Congress candidates Sri Tripathi, Smt. Ganga Devi and Sri Lila Dhar Asthana. A reading of this document also reveals that it was an appeal against the propaganda on the grounds of caste and community and was not an appeal on the ground of caste and community. The subject matter embodied in the said leaflet opens with the words "I have come to know that the candidate who is standing as against the Congress candidates is propagating on communal and caste basis" Jati Adhar Par Brahmaत्मak Prachar Kiya Jaraha Hai" and that Yadavs are being asked to vote against the congress on the ground of community". It is further embodied in the said leaflet that the congress had done work for the welfare of the Kisans and for all the communities including the Yadavs and that congress was the only national organisation which can do good to the country and hence all the voters for the Assembly in the said constituency and in particular the Yadavs were asked that they should not be misled by the venomous propaganda of the opponents and they should cast their votes for the congress. Thus this document would also show that the voters including the Yadavs had been warned not to be led astray by the poisonous propaganda conducted by the opposite side on the basis of caste and community and that they should vote for the congress candidate as Congress was the only organisation which had rendered services to the country. So this was not an appeal on the basis of caste and community but was a condemnation of such a propaganda and votes were asked for through it for the congress on the political grounds. Another aspect of this leaflet is that this particular leaflet Ex. 5 was got printed by Lila Dhar Asthana from the Unnao Press as was deposed to by P.W. 42. Another leaflet containing the same subject matter which is Ex. 92 produced by the petitioner himself was printed at Jagirti Press Unnao. Ex. 92 is admitted to by Sri Tripathi as having been printed at Jagirti Press for which he had made the payment of the printing charges and which had been shown to have been printed as above in the return of election expenses by Sri Tripathi. If Sri Tripathi had got leaflet Ex. 5 also issued then he would have no hesitation in accepting the said fact as he was conceding the issue of leaflet Ex. 92 the subject matter whereof was similar to the one as contained in Ex. 5. Again if he could get Ex. 92 printed at Jagirti Press then he could have no necessity to go to Unnao Press as well for getting the same printed there. That would also show that so far as leaflet Ex. 5 is concerned it was Sri Lila Dhar who had got it issued and Sri Tripathi and Smt. Ganga Devi had nothing to do with it. They may be responsible for Ex. 92 but that is not presently the subject matter of attack. However, having held that the contents of Ex. 5 do not make out a corrupt practice no further discussion is needed on the said leaflet.

Leaflet Ex. 6.—This leaflet purports to have been issued by Ram Adhin Singh Yadav and by some other persons. Its heading is to the effect that by voting for the congress hands of Sri Nehru be strengthened and that "Jativad Desh Ki Ekta Ki Liye Vinash Kar Aur Congress Ko Vote Dena Desh Ke Ekta Aur Pragati Ko Vote Dena Hai." This heading would itself show that it was an appeal against the communal and caste propaganda and votes were being sought for on the basis of political propaganda. A reading of the subject matter embodied in it further shows that it was brought home to the Yadavs through this leaflet that it was being wrongly propagated by P.S.P. candidates that Yadavs Sabha was backing the P.S.P. candidates and it was further brought home to the Yadavs

that the Yadavs Sabha had always been above the "Dalbandi" and had been working for the welfare of their brethren and they have always kept the national welfare in the foremost. It is further embodied in it that in the democratic State it is harmful to the democracy to seek votes on the basis of caste and community. It is further contained in it that the country was passing through bad days, the Kashmir problem was there and as such every citizen including the Yadavs should vote for the congress candidates so that the country may go ahead. It would thus appear that through this document wrong communal and caste propaganda of the opposite side was being exposed and no propaganda on caste and communal ground was made through the said leaflet. Thus this leaflet also does not come within the definition of a corrupt practice.

It would thus follow that though the said leaflets may have been issued and may have even been distributed then too they do not come within the fold of a corrupt practice as contemplated by the Representation of People Act. Looking from either angle it has not been established by the petitioner that the leaflets Exs. 3, 4, 5 and 6 in any way created a situation whereby it could be inferred that a corrupt practice was committed by the respondents 1 and 2 or their agents and workers.

Leaflets Exs. 1 and 2.—So far as Ex. 1 is concerned it had been admitted in the petition by respondents 1 and 2 that the said leaflet had been issued by Sri Bal Ganga Dhar Tripathi but the rest of the para 7(a) of the petition pertaining to the distribution of the said leaflet had been denied nor was it admitted that it contained a false statement of fact which the respondents believed to be false or did not believe to be true in relation to the personal character of the petitioner and in relation to the petitioner's candidature. Sri Tripathi in the course of his deposition had admitted that he had seen leaflet Ex. 1 during the days of the election and after he had seen the said leaflet then he had had a talk about the same with Sri Bal Ganga Dhar Tripathi and the latter had asked Sri Vishambhar Dayal Tripathi to pay the printing charges thereof and he had accordingly paid the same. It may be mentioned here that the petitioner had herself brought on the record certain leaflets which were admitted to have been issued by Sri Vishambhar Dayal Tripathi and that the said leaflets are Exs. 92 to 98, Ex. 71 and Ex. 99 to Ex. 107. The said respondent had further deposed that he had made the payment of printing charges of the aforesaid leaflets and had added that with regard to the leaflets payment of the printing charges whereof was made by him, he did admit the responsibility of the said documents and believed that the contents of the said leaflets were correct. He further deposed that by making the payments with regard to the said leaflets he gave an implied consent to the acts of issuing of the said leaflets. From the said admission of Sri Vishambhar Dayal Tripathi the petitioner sought to infer that with regard to the leaflet Ex. 1 payment whereof according to Sri Vishambhar Dayal Tripathi had been made by him at the instance of Sri Vishambhar Dayal Tripathi too had been issued by Sri Vishambhar Dayal Tripathi's consent as he had himself admitted that by making the payments with regard to the leaflets he gave an implied consent to the acts of issuing of the said leaflets. The learned counsel for the respondents argued, on the other hand, that the petitioner by producing the other leaflets referred to above namely, Ex. 71, Exs. 90 to 108 and by producing their corresponding vouchers and again by producing the return of election expenses filed by Sri Vishambhar Dayal Tripathi negatives the claim about the leaflet Ex. 1 having been got printed by Sri Vishambhar Dayal Tripathi with his consent and about his having paid its printing charges, in as much as, the payment of leaflet Ex. 1 is not entered in the said return of election expenses Ex. 89. It is urged that the aforesaid statement so far as it pertained to leaflet Ex. 1 had been made by Sri Vishambhar Dayal Tripathi under an erroneous impression or else the payment with regard to the same had actually not been made by him as there is no corresponding voucher forthcoming with regard to the same nor is the said payment entered in the said return of election expenses and in this connection it was pointed out that, as a matter of fact, leaflet Ex. 71 which was produced by the petitioner herself was the one which had been issued by Sri Bal Ganga Dhar Tripathi and voucher of payment whereof is annexed with the said leaflet and the said expense is duly contained in the return of election expenses and in the said leaflet it is embodied that Smt. Krishna Kumari and some other persons had committed breach of the pledge and had consequently been turned out of the Congress for six years and that since this leaflet had been paid for by Sri Vishambhar Dayal Tripathi and as its contents were almost of the same type as those of Leaflet Ex. 1, consequently Sri Vishambhar Dayal Tripathi had made the aforesaid statement about his having paid for the leaflet Ex. 1 as well. The said contention would not be devoid of force, in as much as, the

petitioner has herself brought on the record the said return of election expenses and Ex. 71 and other several leaflets for which payment had been made by Sri Tripathi and yet leaflet Ex. 1 is not one of those leaflets for which vouchers are there and payments whereof have been entered in the return of expenses. It may be that as leaflet Ex. 71 had been issued and as its contents were almost similar to those of leaflet Ex. 1, consequently Sri Tripathi may have made the said statement. Since Ex. 71 is not a ground of attack in the election petition, consequently the same cannot now be availed of by the petitioner. On the other hand, having admitted the publication of leaflet Ex. 71 there could be no reason for Sri Vishambhar Dayal Tripathi to deny the publication of leaflet Ex. 1 if the same too had been issued and published at his instance, in as much as, the contents of Ex. 71 were, more or less, the same as those of Ex. 1. However, since Sri Tripathi had admitted in his written statement as well as in his deposition that leaflet Ex. 1 had been issued by Sri Bal Ganga Dhar Tripathi and that he had made the payment thereof when asked for to do so by Sri Bal Ganga Dhar Tripathi, consequently the petitioner may claim that Sri Vishambhar Dayal Tripathi had given an implied consent to the issuing of the said leaflet as well. I have already discussed above the force or otherwise of the said claim, but hereinafter I would discuss the result to be drawn from the contents of the said leaflet Ex. 1 assuming that the same had been published by Sri Bal Ganga Dhar Tripathi with the implied consent of Sri Vishambhar Dayal Tripathi.

It shall have now to be determined as to whether the contents of the said leaflet Ex. 1 are false and if they are in fact false then the question to be determined would be as to whether the petitioner has established that the respondents believed the said contents to be false or did not believe the same to be true and it is then that the said contents can be hit by the provisions of section 123 of the Representation of People Act. The heading of the said leaflet is that Smt. Krishna Kumari had been turned out of the congress. In the body of the said leaflet it is contained that Smt. Krishna Kumari had stood up as a candidate in opposition to Sri Vishambhar Dayal Tripathi and Smt. Ganga Devi Congress candidates. It is further contained in it that Smt. Krishna Kumari had obtained congress ticket and had then given the pledge to the effect that even if she is not given the congress ticket sought for then she would not stand as a rival candidate against any congress candidate to whom the ticket may be given and would render all possible help to the said congress candidate. It is further embodied in the said leaflet that it was surprising that after having given the aforesaid pledge and after having not been able to get the congress ticket the said lady had still stood up as a rival candidate against the congress candidates and that on that account she had been turned out of the congress for six years. It is further contained therein that a person who in the greed of securing a certain status commits a breach of the pledge is not a suitable person to be a representative of the public in the eye of politics and it was further contained in the said document that the voters would cast their votes in the boxes containing the symbol of a pair of bullocks and would thus make successful Sri Tripathi and Smt. Ganga Devi. This leaflet was issued by Bal Ganga Dhar Tripathi. It is now to be seen as to whether Smt. Krishna Kumari had asked for a congress ticket and again as to whether she had given the aforesaid pledge and further as to whether she had not been given the congress ticket and she had still stood up as a rival candidate and as to whether she had been turned out of the congress. It is an admitted fact that Smt. Krishna Kumari did stand as a rival candidate against the congress candidates Sri Vishambhar Dayal Tripathi and Smt. Ganga Devi. So far as the seeking of the ticket referred to above by Smt. Krishna Kumari is concerned we have before us on the record three applications, namely, Ex. A4, Ex. A24 and Ex. A25/D.W. 5. Besides that there is another document Ex. A6 which had been submitted by D.W. 1 Bechu Lal who appeared as a D.W. at the instance of Sri Tribhuwan Singh and upon whose testimony reliance was placed by the petitioner herself and who for all intents and purposes was the witness of the petitioner. Through Ex. A6 Bechu Lal had requested the Provincial Congress Committee to give congress ticket to Smt. Krishna Kumari for the Vidhan Sabha from Hasan-ganj constituency. There is yet another document Ex. A7 which is claimed to be a resignation submitted by Smt. Krishna Kumari from the congress dated 27-1-57. Through Ex. A4, A24 and A25/D.W. 5 Smt. Krishna Kumari had herself asked for congress ticket to be given to her and through Ex. A6 Sri Bachu Lal had made a similar request for Smt. Krishna Kumari. Thus if these documents are genuine then it would follow that Smt. Krishna Kumari had asked for the congress ticket. The Congress Organisation had adopted a certain procedure for selecting their candidates for elections to the Assembly and Parliament and for allotting tickets to the said prospective candidates. One of the conditions upon which the said Organisation insisted was to the effect that every proposed candidate or every candidate seeking a congress ticket shall have to submit a pledge to the effect that he would abide by the discipline of the congress on getting the said

ticket and even if the said ticket is not given to such a candidate then he or she would not stand as a rival candidate to the congress candidate and would render support to the said congress candidate and if he committed a breach of the said term then he would be liable to the disciplinary action to be taken by the Congress and the Congress Organisation had further laid down that all those candidates who were found to have committed breach of the said pledge were to be turned out of the congress organisation. Even non-congress members could be given the congress ticket but in that case too they were to file the pledge referred to above. Without the said pledge being there the application of any proposed candidate could not be considered for allotting the congress ticket.

D.W. 5 Jagat Pal Singh who was Incharge of the office pertaining to the elections on behalf of the Provincial Congress Committee in the said general elections deposed to the said procedure. He gave out that the Provincial Congress Committee had a Parliamentary Board for the elections and the members of the District Congress Committee and the members of the Provincial Congress Committee had been authorised by the Congress to propose the names of the candidates for the Assembly and for the Parliament. He deposed that the aforesaid pledge was to be filed by every proposed candidate and after the said pledge had been furnished then an observer appointed by the Provincial Congress Committee for every district would scrutinise the said proposals and the name of a candidate who had failed to file the requisite pledge was not to be considered by the observer or by the Parliamentary Board for the ticket to be given to him. Ex. A5 is the form of the said pledge. He deposed that Smt. Krishna Kumari's two applications for the congress ticket had been received in the Provincial Congress Committee's office. He filed Ex. A25/D.W. 5 as being one of the said applications. Ex. A4 is the duplicate of Ex. A25/D.W. 5. Through these two applications Smt. Krishna Kumari had asked for the congress ticket for the Legislative Assembly. Ex. A24 is another application of Smt. Krishna Kumari through which she sought ticket for the State Assembly or Parliamentary constituency of Unnao. With regard to the procedure pertaining to the proposed candidates the said witness gave out that if the proposed candidate were not given the congress ticket and yet such a person stood up as a rival candidate then he would be at first warned to withdraw his nomination and if he did not do so then he was suspended from the congress and an explanation was called for and thereafter he would be expelled for six years from the congress. He deposed further that the Parliamentary Board had asked for the explanations from the candidates who had stood up as rival candidates as against the official candidates and such candidates had eventually been expelled for six years and he added that from District Unnao Servsri Anwar Ahmed, Badri Prasad, Ravi Shankar Pandey, Tribhuvan Nath Shukul, Bhauneshwar Prasad Bajpai, Ram Autar Pandey and Smt. Krishna Kumari were such candidates whom the aforesaid action had been taken and they had all been expelled from the Congress for six years. Ex. A8 is a circular issued by the Provincial Congress Committee to the District Congress Committees to get the aforesaid pledge forms executed from the proposed candidates. Through Ex. A9 which is another circular it had been notified that if such pledge forms were not filed then the names of the proposed candidates who had not filed such pledge forms would not be considered. According to the said witness Professor Ram Saran, M.P. had been appointed as an observer for Unnao District to assess the qualifications of the proposed candidates from the said district and Ex. A16/1, Ex. A16/2, Ex. A16/3, Ex. A17/1, Ex. A17/2 and Ex. A17/3 are the extracts from the report of the observer. In the said extracts Smt. Krishna Kumari's name also finds place amongst the candidates whose names had been proposed. Ex. A21 is a letter from the Provincial Congress Committee showing that the pledge of Smt. Krishna Kumari is not traceable in the office of the Provincial Congress Committee. Ex. A23 is the list of the candidates to whom the tickets had been given by the Congress in which the name of Smt. Krishna Kumari is not there. The Provincial Congress Committee after receiving the observer's report would give its own consideration to the merits of the respective proposed candidates and would then forward the names of all the candidates who had been proposed to the Central Parliamentary Board along with its recommendations. Ex. A23 contains the names of the candidates whose names had been proposed and forwarded to the Central Parliamentary Board and the name of Smt. Krishna Kumari is also contained therein. This witness had also deposed that a pledge form executed by Smt. Krishna Kumari had also been received in their office but the same was not presently traceable there. He was positive that the name of no candidate could be considered by Provincial Congress Committee or the Central Parliamentary Board without the pledge being there, nor would the name of such a person be forwarded to the Central Parliamentary Board. With regard to this witness it may be mentioned that the petitioner had herself given an application that certain papers in possession of this witness which had

hitherto not been summoned by the petitioner be allowed to be brought on the record at the instance of the petitioner and that the petitioner further desired that the respondents 1 and 2 may also be allowed to bring on the record papers sought to be brought by them on the record through this witness which had hitherto not been filed by the respondents and pursuant to the aforesaid application of the petition the petitioner as well as the respondents had been permitted to file the said documents, through this witness. This witness also endorses the procedure for the grant of tickets as has been mentioned above. Ex. A13 is the list of candidates to whom the congress ticket was given eventually for the Parliamentary Seat and Ex. A15 is the list of the candidates to whom congress tickets were given by the Central Parliamentary Board for the Assembly Seat. The entire trouble in this case started because of the non-traceability of the pledge submitted by Smt. Krishna Kumari from the office of the Provincial Congress Committee although the same was claimed by the aforesaid witness to have been there in the said office and it is because of that nonavailability of the pledge in question that reliance is placed by the respondents on the aforesaid procedure and on other pieces of evidence to establish that the said pledge did exist in fact and without the same the name of Smt. Krishna Kumari could not have been considered at all. For the present, I am concentrating my attention on the aforesaid procedure. Besides the statement of the said witness there are circulars referred to above issued by the Provincial Congress Committee enjoining that the said pledge must be obtained from the prospective candidates without which the name of no candidate could be taken into consideration. Bechu Lal D.W. 1 who was produced by Sri Tribhuwan Singh and who was also a Member of the District Congress Committee and who had admittedly proposed the name of Smt. Krishna Kumari for the congress ticket through Ex. A6 admitted the correctness of the aforesaid procedure, and he gave out that it was in accordance with the said procedure that he had himself proposed the name of Smt. Krishna Kumari for the Congress ticket. He did concede that an observer would come and scrutinise the names of the prospective candidates and he further admitted that Professor Ram Saran M.P. had come to Unnao as an observer to scrutinise the said list, I have already mentioned above that this witness was out to help the petitioner through thick and thin. At one stage he deposed that he did not know if any pledge form was to be signed by the proposed candidate before the observer would take into consideration his candidature but then he had to concede that it is there in the Vidhan of the congress that a person whose name had been proposed for the candidature has got to sign a pledge and he further admitted that the contents of the said pledge would be those as mentioned heretofore. He also conceded that according to the Congress Vidhan a person whose name had been proposed for the congress ticket could not later stand as a rival candidate and that if the congress ticket were not granted to him and if he did still stand as a rival candidate disciplinary action would be taken against him. He also admitted that a circular had been issued by All India Congress Committee that if a candidate who was not given the ticket did stand as a rival candidate his name would be struck off from the congress for six years. Thus this witness also deposed to the correctness of the aforesaid procedure. He however did not know as to whether Smt. Krishna Kumari had been expelled from the congress for six years on account of her having stood up as a rival candidate despite his having proposed her name for the ticket. He had not even cared to ascertain after reading leaflet Ex. 1 as to whether the person whose name had been proposed by him had been expelled from the congress in fact or not. However, it is enough to mention here that this witness also confirms the correctness of the aforesaid procedure and the filling of the aforesaid pledge to be an essential condition for the consideration of the name of proposed candidate for the said ticket. D.W. 2 Chhotey who was also produced by Sri Tribhuwan Singh as a witness and who claimed that he had himself asked for a congress ticket for Legislative Assembly from District Hardoi had also admitted that he had signed the said pledge and had conceded that every proposed candidate had actually signed the said pledge. I have already mentioned above that this witness had been helping Smt. Krishna Kumari by serving summons on her witnesses in connection with this election petition. However, from his statement too it is obvious that the said pledge was in fact to be filed by a proposed candidate. Sri Vishambhar Dayal Tripathi had also deposed to the said procedure. Thus the aforesaid documentary evidence coupled with the statements of the witnesses produced by Sri Tribhuwan Singh upon whom reliance had also been placed by Smt. Krishna Kumari and the statements of the other D. Ws. referred to above produced by the respondents 1 and 2 do establish beyond reasonable doubt that the pledge in the aforesaid form was essentially to be filed by every candidate whose name may have been proposed or who may have applied for the congress ticket. Before I come down to the evidence relating to Smt. Krishna Kumari having actually filed the said pledge it would be worthwhile

dealing with the applications Exs. A4, A24 and A25/D.W. 5 which were claimed to have been filed by Smt. Krishna Kumari for the said ticket and the application Ex. A6 filed by Bechu Lal proposing the name of Smt. Krishna Kumari for the said ticket.

Smt. Krishna Kumari did admit that the said application Exs. A4, 24 and A25/D.W. 5 bear her signatures. She however denied that she had affixed her signatures thereon in token of her having submitted the said papers as applications for the congress tickets. She gave out an explanation of her own with regard to the circumstances in which she had affixed her signatures on the said documents. She gave out that Sri Vishambar Dayal Tripathi had come to her with two typed papers and had asked her to affix her signatures thereon and had represented to her that they would keep those papers on their record as she had done social work in this District and that in reply thereto she had told him that she was not a member of the Congress and as such she was not supposed to affix her signatures on those papers and that then Shri Tripathi had told her that as she happened to be a lady so as a special case they would keep those papers on their record about the social work that she had done and that thereupon she had affixed her signatures on the said applications Exs. A4 and A24. She added that at that time when she had affixed the said signatures then the cuttings marked L,M,N and O were not thereon Ex. A4 and that the typed writing encircled blue on Ex. A24 and marked X was also not there at that time. Thus Smt. Krishna Kumari would make us believe that though she was not a congressite yet she had affixed her signature on the said papers as Tripathi had represented to her that the said papers would be kept on the record of the congress in token of the social work done by the petitioner in this district. She had admitted in cross-examination that though she was known to Sri Tripathi for the last eight or nine years yet Sri Tripathi had never brought any paper hitherto to her for her signatures. In the course of examination-in-chief Smt. Krishna Kumari had posed as if she was literate and she was made to prove the contents of Ex. A6 the application submitted by Bechu Lal about the proposal of her name and she had proved the signature as well of Bechu Lal thereon. Though she had been made to prove the entire writing of Ex. A6 in the examination-in-chief yet when the matter came to the cross-examination then she had to admit that she could not read the contents of the papers to which she had referred in the examination-in-chief and added that as she could not read the said papers consequently she could not say as to what was contained in the said papers. Thus it would appear that though the said lady had tried to prove the paper Ex. A6 by posing that she knew the contents thereof and the writings of Bechu Lal on the said paper yet when her knowledge of the Hindi language was tested then she had to admit that she could not read the contents of the said papers. Similarly she deposed in the cross-examination, at first, that she had read some Hindi and a little English privately though she had never been to a school yet she had to admit that she would not be able to read a letter written in Hindi or in English. She was asked to read the typed written matter encircled blue referred to above as contained on Ex. A24 and she replied that she could not read the same. Thus it would appear that though in the examination-in-chief she had sought to prove certain documents yet her knowledge of the language used in the said documents eventually came out to be absolutely nil. If that were so then in the examination-in-chief itself she should not have posed as above. That shows as to how attempts were made by the petitioner to conceal the true state of affairs. Similarly, though in the examination-in-chief she had represented that Sri Tripathi had come to her to secure her signatures on the said papers telling her that the same were being obtained on the said papers to keep the said papers on the record of the congress in token of the social services rendered by her to the District yet in cross-examination she had to change her said statement and deposed that when Sri Tripathi had brought Ex. A24 to her then she had inquired from him as to what was the subject matter contained in it and then he had told her that it contained the same subject matter as was contained in the paper which he had brought to her four days prior thereto and then he had told her at that time that in the first paper which he had brought to her four days earlier there was a proposal to make her stand as a candidate for the Assembly and that the second paper which he had brought to her subsequently as above contained a proposal for making her stand as a candidate for the Parliament. Thus the cat came out of the bag and she had to concede in a way that the papers to which she had affixed her signatures were, in fact, the applications or the proposals by which she was to be given the congress ticket for the Assembly or for the Parliament. It would thus appear that her earlier stand about a representation having been made to her by Shri Tripathi about the said papers to be kept on the record in token of the meritorious services rendered by her to the District fizzled out altogether. Sri Tripathi had denied *in toto* his having taken the said papers to the said lady to obtain her signatures

thereon. It is not at all credible that Sri Tripathi would take the said paper to the said lady and would represent to her that she should affix her signatures on the said papers as the same would be kept on the record of the congress in token of her social services rendered to the district and she would then affix her signatures thereon. As observed above, even the said lady had to change her stand in that respect in cross-examination when she had to give out that Sri Tripathi had told her that one of the papers contained a proposal for her candidature for the Assembly and the other for her candidature for the Parliament. This change in her aforesaid statements does reveal that she had no legs to stand upon in the matter of the said signatures having been made by her on the said documents without her having been aware about the true state of affairs. It seems that she could not venture to go back from her signatures on the said documents and, therefore, she had to set up some or the other explanation with regard to her having affixed her signatures on the said documents and thus she gave out an explanation in the examination-in-chief and then another explanation in the cross-examination. As observed earlier, she could not be persuaded to affix her signatures on the said typed matters under any misrepresentation. She is not an ordinary type of a lay-lady. She has admittedly been attached to several organisations. Though she is semi literate yet from the records it appears that her sphere of social activities had been sufficiently wide and that being so it would not be probable to secure her signatures on some papers on the basis of some misrepresentation. In the examination-in-chief she had tried to convey that the said two papers had been brought to her by Sri Tripathi together but in cross-examination she created a gap of four days in between the two. One can understand a misrepresentation having been effected once by a certain person but it is not believable that the same person would venture to repeat the same over again after a certain interval. Again, it is not credible that at one stage a representation would be made to the petitioner that her signature is being obtained on a certain paper to be kept on the record about her social services and yet after a lapse of four days a similar representation would be made to her to secure her signatures over again on another paper. That would at once create a suspicion in the mind of the person whose signatures are sought for, more particularly, when prior thereto Sri Tripathi had never been to her to secure her signature on any document. The said explanations offered by Smt. Krishna Kumari about the way in which she had affixed her signatures on the said two documents do not at all appeal to reason. Another feature of this incident is that another document Ex. A25/D.W. 5 which also admittedly bears the signatures of Smt. Krishna Kumari is there on the record to belie the aforesaid position. This document had been placed on the record by Jagat Pal Singh D.W. 5. I have already observed above that the learned counsel for the petitioner had himself suggested that all the papers which this witness had brought with him be allowed to be placed on the record at the instance of the petitioner as well as the respondents 1 and 2 so that the points in issue may be thoroughly thrashed in the ends of justice and then this paper too had been placed on the record. Ex. A25/D.W. 5 is the duplicate of Ex. A4. If Shri Tripathi had obtained the signatures of the said lady on two papers Ex. A4 and Ex. A24 as was deposed to by her then there remains no explanation from her side about her signature on Ex. A25/D.W. 5. The said document had been placed on the record by the aforesaid D.W. and yet at no time subsequent thereto the petitioner had tried to offer any explanation for her signature thereon though she had admitted her signatures on the said document. The presence of the said third document belies the petitioner's version about the way in which she had affixed her signature on the aforesaid two papers and it becomes more probable that, in fact, she had admitted two applications in duplicate for the Assembly as well as for the Parliamentary Seats to obtain the congress tickets. The case of the respondents with regard to the said papers is that the petitioner had herself submitted the said applications under her signatures for the congress ticket and that the present explanations of the said lady are afterthought to back out all the said applications lest it may be urged that she had, in fact, sought for the congress ticket and had been refused the same and she had yet stood up as a P.S.P. candidate. The said contention appears to be sound, in as much as, the aforesaid explanation of Smt. Krishna Kumari is absolutely incredible. At this stage it would be worthwhile noting down that the entire family of Smt. Krishna Kumari was linked up closely with the congress organisation. Her husband Sri Pearey Lal has been an M. P. on the congress ticket ever since 1952 to 1957, Captain Mohan Lal the brother of Sri Pearey Lal was a member of the Legislative Assembly on the congress ticket during the said period. With regard to Smt. Krishna Kumari as well it is claimed by the respondents 1 and 2 that she was a member of the District Board Unnao on the congress ticket since several years and it was in that background that presently she had applied through the said papers for the congress ticket for the Parliamentary or the Assembly Seats. Smt.

Krishna Kumari presently denied that she was a congressite and claimed that since 1956 she joined the P.S.P. Even if it be assumed that she joined the P.S.P. in 1956 that would not improve her position, in as much as, the seeking of the congress ticket as above and its refusal took place in the year 1956 and it is probable that having felt frustrated in that respect she chose to change side. Sri Tripathi who had also been a Chairman of the District Board during the aforesaid period claimed that Smt. Krishna Kumari had been returned to the District Board in 1948 on the congress ticket yet Smt. Krishna Kumari denied the correctness of the said claim. She gave out evasive replies when asked as to how many members of the District Board belonged to the Congress and how many to the other parties. It is not believable that a member of the District Board would continue as such for a number of years and would yet not be in the know of the fact as to how many members of the Board belonged to which particular political party. That shows that she had been trying to suppress the said fact. Even several other witnesses who were produced by Smt. Krishna Kumari with regard to the distribution of leaflets some of whom belonged to her own village when questioned as to on what ticket Smt. Krishna Kumari had gone to the District Board tried to suppress the answer to the said query by saying that they did not know about it. They were the voters who had returned Smt. Krishna Kumari to the District Board and would as such in all probability be knowing as to on what ticket had she contested the said election and yet almost all of them tried to suppress that fact, but the truth came out of the mouth of P.W. 11 Brindaban who belongs to the very village of the petitioner and who deposed in cross-examination that the said lady had been elected to the District Board on the congress ticket. This witness had further deposed that initially Smt. Krishna Kumari had applied for a congress ticket being given to her for the Parliamentary seat in the election in question. Thus this witness not only gives a lie direct to the aforesaid claim of the petitioner but fully corroborates the respondents' claim about Smt. Krishna Kumari having been returned to the District Board on the congress ticket and again having herself applied for the Parliamentary Seat to get a congress ticket. There is yet another witness of the petitioner who gave her a go-by. This witness is P.W. 27 Babu Lal of Puran Khera. He also admitted that Smt. Krishna Kumari was a member of the District Board on the congress ticket. This witness went a step further and deposed that Smt. Krishna Kumari had not been turned out of the congress but had herself left the congress before the polling day some fifteen to twenty days before the polling day. Thus this witness confirms that Smt. Krishna Kumari had been there in the District Board on the congress ticket and again had ceased to be in the congress since a few days before the polling. That would lend support to the respondents' claim about the said lady having submitted her resignation from the congress after she had been refused the congress ticket for the Assembly or for the Parliament to avoid being stigmatised as a traitor to the congress cause and to be in a position to secure the P.S.P. aid. Thus we find that atleast some of the petitioner's own witnesses do show that she had sought the congress ticket for the Parliamentary Seat and that she had been a member of the District Board on the congress ticket. When this is the situation then there remains no doubt to infer that she had herself submitted applications Exs. A4, A24 and A25/D.W. 5 for seeking congress tickets for the Legislative Assembly and the Parliament. A perusal of Ex. A24 further shows that therein too she had herself claimed that her husband Sri Pearey Lal was a member of the Parliament on the congress ticket and that she had been elected to the District Board Unnao on the congress ticket. This part of the said application is in consonance with the depositions of the aforesaid P.Ws. in that respect. The learned counsel for the petitioner urged that the respondents could have produced the membership registers of the congress to show that the said lady was a member of the congress and that having not produced the said register they have themselves created a circumstance from which it may be presumed that the said lady was not a member of the congress. This contention can be met with two replies, firstly, as given out by the respondents a person may become a member of the congress in any part of India and as such it may not be known to the respondents as to at what particular place Smt. Krishna Kumari was registered as a member of the congress and consequently they could not produce any such register to vouchsafe the said position and secondly it had no where been specifically alleged by the respondents that Smt. Krishna Kumari was in fact a four anna member of the congress and it was claimed that though a certain person may not be actually a member of the congress yet he may be considered for a congress ticket for the District Board or for the Legislative Assembly or the Parliament, and in that position the question of the production of any such register would not arise. In the leaflet Ex. 1 there is no allegation that Smt. Krishna Kumari was a member of the congress. The allegation pertained to her having sought for the congress ticket having given a pledge and then committed the

breach thereof and having been turned out of the congress on that account. It has come up in the evidence led by the respondents and admitted to by some of the witnesses of the petitioner as well as discussed heretofore that when a non-member of the congress is given a congress ticket or is proposed for a congress ticket and signs the pledge then he renders himself subject to the discipline of the congress. Thus in this case if it had not been established by the respondents that Smt. Krishna Kumari was a four anna member of the congress then that does not help the petitioner, in as much as, the circumstances of this case reveal that she was a member of the District Board on the congress ticket and her other members of the family were closely connected with the congress and in all probability she had herself submitted the aforesaid applications for the congress ticket. Sri Vishambhar Dayal Tripathi had deposed that the papers Exs. A4 and A24 are, in fact, the applications of Smt. Krishna Kumari for the congress ticket and that the Provincial Parliamentary Board had not approved the candidature of Smt. Krishna Kumari. Futile attempts were made on behalf of the petitioner to show that the applications Exs. A4, A24 and A25/D.W. 5 were never placed before the Provincial Parliamentary Board of the Congress and that they remained in the custody of the District Congress Committee whereof Sri Bal Ganga Dhar Tripathi who was the brother of Sri Vishambhar Dayal Tripathi was the President. This contention falls to the ground the moment we look to the fact that Ex. A25/D.W. 5 was produced by Jagat Pal Singh D.W. from the record of the Provincial Congress Committee. Sri Vishambhar Dayal Tripathi had deposed that he had seen Ex. A24 and A4 at first in the District Congress Committee Office and again in the Provincial Congress Committee Office and that he had brought the said documents from the office of the Provincial Congress Committee to be produced in the court. He had added that the two documents which he had seen in the office of the District Congress Committee were, in fact, not the same which he saw in the office of the Provincial Congress Committee but the two documents which he saw in the Provincial Congress Committee were the duplicates of the two documents which he had seen in the office of the District Congress Committee. According to him, Exs. A4 and A24 were the two documents which were out of the aforesaid four documents. It is clear that Ex. A4 and Ex. A24 had been submitted in duplicates by Smt. Krishna Kumari. Obviously enough Ex. A25/D.W. 5 which is the duplicate of Ex. A4 was brought by Jagat Pal Singh from the Provincial Congress Committee Office. Reliance was placed by the petitioner on the statement of D.W. 20 Gur Charan Lal a clerk in the office of the District Congress Committee who deposed that the papers Ex. A4 and A24 had not been sent to the Provincial Congress Committee and remained in the office of the District Congress Committee. The aforesaid exhibits marks were placed on the said papers in the court and so it would be difficult for any person to distinguish a particular duplicate from its other counterpart and so if a particular witness deposed with regard to a particular exhibited paper as having been retained in one office while the other pointed out the other duplicate thereof as having been retained in that office and the other counterpart having been sent to the Provincial Congress Committee's office then that discrimination is insignificant, in as much as, the witnesses are not aware of the exhibits marks which have been put on the said papers and they can only depose from the contents of the said papers. However the said discrepancy is of no significance when we find that Ex. A25/D.W. 5 is coming forth directly from the Provincial Congress Committee's office and again when even the petitioner does admit that her signatures are there on the said documents. There are other pieces of evidence which further show that the said applications were there before the Provincial Congress Committee's office for the consideration of the claims of Smt. Krishna Kumari on the basis of the said applications. According to D.W. 20 Gur Charan Lal a list of the proposed candidates was sent to the Provincial Parliamentary Board on a form which was like the form Ex. 129/D.W. 5. Ex. A23 is the list of the proposed candidates which had been prepared by the Provincial Congress Committee and forwarded to the Central Election Committee. In this list the name of Smt. Krishna Kumari does figure amongst those names which had been considered and to whom the said ticket was not recommended to be given. That list also contains the names of the proposed candidates who were recommended for the congress ticket. Thus this document would show that the applications of Smt. Krishna Kumari were there before the Provincial Congress Committee for consideration. Ex. A16/1 to 3 and Ex. A17/1 to 3 are the extracts of the observer's report in which too the name of Smt. Krishna Kumari as having been one of the proposed candidates for the congress ticket is contained. It was urged on behalf of the petitioner that the original report of the observer has not been produced and as such these extracts would be of no avail to the respondents. I agree with the said contention, in as much as, these extracts were prepared by the office of the Provincial Congress Committee and the originals from which the same were prepared have not been produced. However, from Ex. A23 it is obvious that the name of Smt. Krishna

Kumari had been forwarded to the Provincial Parliamentary Board. Another fact which is admittedly there is that the proposal of Smt. Krishna Kumari's name for the congress ticket was admittedly there through Ex. A6 the application submitted by D.W. 1 Bechu Lal. So the applications Exs. A4, A24, A25/D.W. 5 and Ex. A6 were there for the congress ticket to be given to Smt. Krishna Kumari. Smt. Krishna Kumari herself admitted that she had been told by Bechu Lal that he had proposed her name for the said ticket. She had nowhere refused to accept the said ticket or to convert in any way that she was not agreeable to the proposal of Bechu Lal. All these circumstances would show that her name was under consideration before the Provincial Congress Committee on the basis of the said applications for the congress ticket and her name had even been forwarded to the Central Parliamentary Board though without any recommendation for the ticket being granted to her.

There are other documents which further confirm that Smt. Krishna Kumari's name had been under consideration for the aforesaid congress ticket and which further throws light on the point that she had submitted the aforesaid applications. The petitioner herself brought on the record papers Exs. 131/D.W. 5 and 132/D.W. 5. Ex. A32/D.W. 5 is the telegram from the All India Congress Committee to the Provincial Congress Committee directing that the District Congress Committees' Presidents be asked to secure withdrawal immediately from all Congress men other than selected candidates who had filed nominations and further that the District Congress Committee's Presidents be authorised to suspend those who declined and disciplinary action of debarring such persons from the congress membership for six years be taken against such persons. Ex. 131/D.W. 5 is the letter confirming the said telegram. Ex. 133/D.W. 5 is a notice from the Provincial Congress Committee to Smt. Krishna Kumari and others calling upon them to show cause within seven days as to why action be not taken against them for having stood up as rival candidates against the discipline of the congress and informing further that if no explanation is received within a week then suitable disciplinary action would be taken against them. Ex. 134/D.W. 5 is another notice sent to Smt. Krishna Kumari and some other persons who had earlier been served with the notice Ex. 133/D.W. 5 informing them that since no explanations had been received from their side, consequently they had been turned out of the congress for six years. So all these papers which the petitioner had herself brought on the record through D.W. 5 Jagat Pal Singh lead to the irresistible conclusion that Smt. Krishna Kumari's name had been taken into consideration by the Provincial Congress Committee and even by the Central Parliamentary Board and eventually when she and others had stood up as rival candidates then their explanations had been called for and thereafter disciplinary action was taken against them and they were turned out of the congress for six years. Thus these papers by themselves are a complete death-knell to the claim of Smt. Krishna Kumari that she had not applied for the congress ticket and had not been turned out of the congress. It is not at all believable that the Provincial Congress Committee, the Central Parliamentary Board sitting at Delhi and the District Congress Committee Unnao would all conspire together to forge all these documents to help the respondents nos. 1 and 2 at this juncture. As mentioned above, it was the petitioner herself who sought the production of the said documents at the record and having so done she cannot go back from the effect thereof. In view of the said documents it is obvious that Smt. Krishna Kumari had submitted applications for the congress ticket and the same had been duly considered too till the last and when she had stood up as a rival candidate she was turned out of the congress. The procedure for the grant of the congress tickets does enjoin that a pledge mentioned above should be filed by the candidate whose name had been proposed or who had submitted an application without which the name of such a person would not be considered at all. In this case too there could be no departure from the said procedure. Therefore, presumably enough there would have been a pledge from Smt. Krishna Kumari as well in that respect to enable the authorities concerned to take notice of her case for the grant of the ticket in question. It has come up in evidence that Sri Ram Saran was an observer for the constituency in question. Even he would not have taken notice of the applications of Smt. Krishna Kumari if no pledge were there and the name of Smt. Krishna Kumari could not have come before the Provincial Congress Committee or the Central Parliamentary Board without the same. Thus these circumstances go to show that Smt. Krishna Kumari had, in all probability filed a pledge. There are other pieces of evidence also to show that the pledge was there.

D.W. 5 Jagat Pal Singh who had produced the aforesaid documents of the petitioner as well as the respondents did depose that a pledge form executed by

Smt. Krishna Kumari had been received in the Provincial Congress Committee's office but it was not presently traceable in the said office. He was positive that without the pledge form the observer would not take into consideration the proposal of any candidate nor would such candidate's name be taken into consideration by the Provincial Board or by the Central Parliamentary Board. He added that the name of Smt. Krishna Kumari had been sent to the Parliamentary Board in the list of rejected candidates. There does not appear any reason to disbelieve the statement of this witness. It is not a case where Sri Tripathi alone could be claimed to wield his influence on the Provincial Congress Committee's office, in as much as, the other side too was equally influential as the husband of Smt. Krishna Kumari had continuously been an M.P. on the congress ticket and the brother of Sri Percy Lal too had been a member of the Legislative Assembly on the congress ticket. Even in the elections in question the name of Captain Mohan Lal the brother of Sri Percy Lal had been forwarded to the Central Parliamentary Board as a second candidate for the Legislative Assembly. Thus it is not conceivable that any member of the Staff of the Provincial Parliamentary Board could venture to go out of his way to oblige Sri Vishambhar Dayal Tripathi and to cause harm to Smt. Krishna Kumari. It was urged on behalf of the respondents 1 and 2 that as the petitioner and her relatives had also close ties with the congress so they may have some hand in the present non-availability of the pledge. That may or may not have been so, in as much as, it is quite probable that the said pledge may have gone astray some how or other without the positive interference of any one. However, this witness deposed that the said pledge was there in their office. It has come up in evidence that in the days of election there was a huge rush of work in the office of the Provincial Congress Committee and as such some of the papers received there were not even stamped and dated though they were actually there and some may have gone amiss. Such a possibility cannot totally be excluded, when obviously enough there would be a huge rush of work in the days of election. Ex. 130/D.W. 5 which is a circular issued by the congress was also produced by the said witness. The said witness deposed that he could not say as to till when the said pledge which had been received in their office sometimes in September 1956 remained there. He came to know in October or November, 1957, that the said pledge form was not traceable in their office. At that time Sri Vishambhar Dayal Tripathi had come there to see the pledge form and then the same was searched out and it was then that it was found untraceable. This need for search had arisen because of this election petition. This witness was positive from his personal knowledge as well that the name of Smt. Krishna Kumari had been placed before the U.P. Parliamentary Board for consideration and he had brought with him the chart constituency-wise containing the names of those candidates who were considered by the Parliamentary Board and he affirmed that from the said chart which was with him he could show that Smt. Krishna Kumari's name was there in the said chart. The learned cross-examiner having extracted out the aforesaid matter from the said witness did not further venture to get the said chart brought on the record. In short, we have from the statement of this witness that the said pledge had been there in their office. The other witness who deposes to the existence of the said pledge is D.W. 20 Gur Charan Lal the then office clerk of the District Congress Committee Unnao. This witness claimed that the pledge forms which had been received in the District Congress Committee's office had been forwarded to the Provincial Congress Committee's office after entering the same in the despatch register is Ex. 136/D.W. 20. In the said despatch register on the serial No. 3787 dated 3rd October, 1956, it is contained that the pledge forms of Servasri Vishambhar Dayal Tripathi, Bal Ganga Dhar Tripathi, Sheo Mohan Bupai, Smt. Krishna Kumari, Jagdish Chandra Dixit, Janki Devi, Ram Nath Pathak, Ram Autar Pandey, Badri Prasad and Pancham Lal were despatched to the Provincial Congress Committee. Thus this entry would show that the pledge of Smt. Krishna Kumari had also been despatched on the aforesaid date to the Provincial Congress Committee's office. The said pledges had been despatched under registered cover and the postal receipt is also annexed in the said register. The A.D. receipt is not there in the said register and consequently it was urged on behalf of the petitioner that, in fact, the said despatch did not take place. This contention is futile in as much as, the postal receipt is already there to show that the despatch of registered cover did take place on the said day. This witness is no longer in the service of the congress. According to this witness the application Ex. 46 had been given to him personally by Smt. Krishna Kumari when Bechu Lal was there in her company. It was urged that the said witness had despatched pledge forms in two instalments and from this it was sought to be inferred that as a matter of fact Smt. Krishna Kumari's pledge form was not there. That contention is of no avail, in as much as, there was no hard and fast rule for sending all the pledge forms together in one instalment. This witness had deposed in cross-examination that Smt. Krishna Kumari had her-

self handed over her pledge to him duly executed and filled in by her. According to this witness she had filled in the said form in his presence. The pledge form which had been filled in and filed by Smt. Krishna Kumari was in Hindi. This witness had added that on 3rd October, 1956, he had himself sent the aforesaid ten pledge forms to the Provincial Parliamentary Board under registered cover and Ex. 137/D.W. 20 is the postal receipt of the said registered cover. The authenticity of the despatch register was challenged by the petitioner by urging that initially the last entry in the said register bearing No. 580 is dated 22nd February, 1953 and that thereafter this register was recommenced in June, 1956. The said witness explained by saying that after the last entry of 53 was made in the said register then the entries of subsequent years were made in other registers and when in June, 1956 the last despatch register which was then in vogue was completed then a fresh despatch register was demanded from the Provincial Congress Committee and as none was then available they made use of the aforesaid old register of 1953 and entered therein the first entry dated 2nd July, 1956 and then it continued on to be used upto 23rd March, 1957. Merely because an old register was made use of it cannot be concluded that forgeries were made in the said register. A postal receipt does confirm that a despatch of registered cover had in fact been made. As observed earlier there does not appear any reason that the Central Parliamentary Board, the Provincial Congress Committee's office and the District Congress Committee's office would all join hands together to commit forgeries to help the respondents at this juncture. It was urged that this witness was employed in the District Board Office after he ceased to be in the congress office and that Bal Ganga Dhar Tripathi would have exercised his influence in getting the said witness employed there. Smt. Krishna Kumari too was all along a member of the District Board in which this witness was then employed. The said witness denied that he secured the said job through the agency of Sri Vishambhar Dayal Tripathi or Bal Ganga Dhar Tripathi. There is nothing to infer that this witness who is even now not in the District Board office was actually employed there through the aforesaid agency. It was contended that whereas Jagat Pal Singh had deposed that sometimes in September 1956 the said pledge had been received in the Provincial Congress Committee's office, this witness from the documentary evidence shows that on 3-10-56 the same had been despatched. This discrepancy is insignificant, in as much as, Gur Charan is deposing from the document before him supported by the postal receipt while Jagat Pal Singh had stated from memory that so far as he recollected the said pledge had been received some where in September. There would hardly be a difference of a week or so in the aforesaid two positions. Thus from the statement of Gur Charan it follows that the said pledge had been given to him by Smt. Krishna Kumari herself and he has proved from the despatch register that the pledge of Smt. Krishna Kumari had also been sent to the Provincial Congress Committee's office after being duly entered in the said register. The documentary evidence referred to above coupled with the statements of the aforesaid two witnesses of the Provincial Congress Committee office and the District Congress Committee's office do reveal that the said pledge was there. The said pieces of evidence are further strengthened by the fact that the submission of a pledge was a condition precedent for the consideration of any candidates claimed to the said ticket as was even admitted to by some of the witnesses of the petitioner herself. Together with the said circumstance is the evidence of the two P.Ws. referred to earlier who claimed that Smt. Krishna Kumari was a member of the District Board on the congress ticket and the statement of one of them was that she had left the congress fifteen to twenty days before the polling day. All these circumstances go to establish beyond reasonable doubt that Smt. Krishna Kumari had filed a pledge and had submitted the applications for the congress ticket and had not been given the said ticket when she stood up as a rival candidate and her explanations had been sought for and thereafter disciplinary action had been taken against her whereupon she was turned out of the congress for six years. There is yet another piece of evidence relied upon by the respondents to show that Smt. Krishna Kumari had filed the said applications and had eventually ceased to be a congressite after having been not given a congress ticket and the said piece of evidence is the resignation Ex. 47 said to have been filed by the petitioner.

Smt. Krishna Kumari has denied having submitted the resignation Ex. 47 to the congress, nor does she admit that her signature is contained on the said document. Smt. Ganga Devi the respondent has deposed that she knows the signature of Smt. Krishna Kumari and has further stated that the signature contained on the said document is that of Smt. Krishna Kumari. Smt. Ganga Devi is a literate lady having graduated in 1939 and having been the Inspector of Schools from 1943 to 1949. She claimed that Smt. Krishna Kumari had approached her as

well for getting the congress ticket for her. According to her she had seen Smt. Krishna Kumari writing and affixing her signature many a time. She deposed that Smt. Krishna Kumari had stayed with her in the same room at Lucknow in 1953-54 and it was then that she had seen her writing and affixing her signatures. Smt. Ganga Devi added that her husband was then an M.L.A. in the U. P. Legislative Assembly and had been allotted a flat in Darulshafa at Lucknow. At that time Smt. Ganga Devi was an M. P. and whenever she would be off from the Parliamentary work at Delhi she would proceed to Lucknow to stay with her husband in the aforesaid flat. In those days Sri Pearey Lal the husband of Smt. Krishna Kumari was also an M. P. on the congress ticket, consequently the kinship between Smt. Ganga Devi and Shri Pearey Lal and his wife could certainly come into being. Sri Pearey Lal had left Smt. Krishna Kumari and his children at that occasion with Smt. Ganga Devi to stay with her at Lucknow in the aforesaid flat and there she had stayed as above in June and July 1953 and it was during that period that Smt. Ganga Devi had had occasions to see the writings and signatures of Smt. Krishna Kumari. There does not appear any reason to discredit the aforesaid claim of Smt. Ganga Devi. Smt. Ganga Devi and Sri Pearey Lal both were M.Ps. for the Reserved Seats. Under these circumstances, social relations could develop between them and it could be quite probable that Smt. Krishna Kumari along with her children could be accommodated by Smt. Ganga Devi in her husband's flat for a couple of months or so. That being so, Smt. Ganga Devi did have opportunities to see Smt. Krishna Kumari writing and affixing her signature. From the statement of Smt. Ganga Devi it follows that the said signature is that of Smt. Krishna Kumari. Another witness who deposed to the said signature being that of Smt. Krishna Kumari is D. W. 20 Gurcharan Lal the then office clerk of the District Congress Committee Office Unnao. He had deposed that Smt. Krishna Kumari had submitted Ex. A7 in the said office and had affixed her signature on the said document in his presence. It bears the signature of the said witness as well and also the seal of the congress office. It also contains the words "*Smt. Krishna Kumari Se Prapt.*" This endorsement bears the signature of Gur Charan Lal and the date thereunder is 27th January, 1957. It was pointed out by the learned counsel for the petitioner that in the aforesaid despatch register Ex. 136/D. W. 20 the despatch of the said document to the Provincial Congress Committee is not noted. According to the said witness, an extract of Ex. A7 had been sent to the Provincial Parliamentary Board and an exact copy of the same had not been forwarded to the said Board. He admitted that in the despatch register it is not entered that the said extract had been despatched as above but he was emphatic that an information in writing had been communicated to the Provincial Parliamentary Board about the receipt of the said resignation. In the receipt register Ex. 135/D. W. 20 also the receipt of the said document is not noted. The said witness gave out that he had omitted to enter the receipt of the said document in the said register by mistake. We find that the last date of filing nomination papers for the seats in question was 29th January, 1957 and this resignation had been received just a day or so prior to the said date. The mere omission of the non entry of the said document in the said register does not itself indicate that the said resignation had been engineered up, more particularly, when we find that P. W. 27 Babu Lal also confirms that Smt. Krishna Kumari had herself left the congress a few days before the polling. That would show that whereas on the one hand she had not been given the congress ticket for which she had submitted applications and when she was trying to join the P. S. P. to get their ticket, she had at the same time submitted the said resignation from the congress to be free to get the P. S. P. ticket and at the same time to save herself from the disciplinary action which the congress would take against her. In this case, whereas Smt. Ganga Devi and D. W. Gur Charan Lal deposed that the signatures on Ex. A7 were those of Smt. Krishna Kumari, no attempt was made by her to produce an expert to counteract the aforesaid claim of the said respondent and her witness. The learned counsel for the petitioner urged that three Vakalatnamas which are there on the record bear the signatures of Smt. Krishna Kumari and that two order-sheets also bear her signatures and that a comparison of the said signatures with the signature on Ex. A7 would show with a naked eye that the said signatures differ *inter se*. As observed above, it would have been much better for the petitioner to have sought the aid of a hand-writing expert to depose to the aforesaid discrimination, if the same were there but the said course was avoided and as such the presumption would be adverse to her on that point. The said Vakalatnamas are dated 19th July 1957, 5th August 1957 and 15th April 1958 and the order sheets on which the petitioner had affixed her signature are Hindi order-sheets dated 24th September 1957 and 14th April 1958. So far as one could compare the signature on the said papers with the signature on Ex. A7 one would come to the conclusion that the signatures on all the said papers tend to be identical rather than different from one another. However, as observed above, the petitioner avoided to produce

the expert on the said point and thus too there does not appear any reason to disbelieve the statement of Smt. Ganga Devi and Gur Charan Lal on the aforesaid point. This document also, therefore, confirms that Smt. Krishna Kumari had, in all probability, become a congressite after having submitted the aforesaid applications for the congress ticket and after the application by Bechu Lal had also been submitted for the ticket being granted to her. This document also helps in arriving at the conclusion that the pledge in question must have been filed by Smt. Krishna Kumari as well. It does appear that since the said pledge has presently somehow or other gone amiss from the office of the Provincial Congress Committee consequently the plea about the same not having been filed is being advanced. All these circumstances, referred to above, lead to the irresistible conclusion that Smt. Krishna Kumari had sought the congress ticket, had filed the said pledge, had committed a breach thereof by standing as a rival candidate after having been refused the congress ticket and disciplinary action was consequently taken against her and she was expelled from the congress for a period of six years. Thus it would follow that the contents of the leaflet Ex. I were in no way false. At least one conclusion which can positively be arrived at is that in face of the aforesaid circumstances every man could reasonably believe that the aforesaid facts were correct or atleast could not believe that the said facts were not true.

Pursuant to the aforesaid discussion even if it be assumed that the leaflet Ex. 1 had been issued and distributed and that too with the consent of the respondents in question then too the petitioner has failed to establish that the said leaflet Ex. 1 contained in it statements of fact which were false and which the respondents or their agents or workers either believed to be false or did not believe to be true in relation to the personal character or conduct of Smt. Krishna Kumari or in relation to her candidature. The charges of corrupt practices under the Representation of People Act are of a quasi criminal nature and the person who advances such charges has got to establish the same just as he has got to bring home a charge to an accused. From the aforesaid discussion it follows that Smt. Krishna Kumari has failed to discharge the said onus with regard to the leaflet Ex. 1.

Having decided above that no corrupt practice was made out by the issuing and distribution of leaflet Ex. 1 now I come to the leaflet Ex. 2. This leaflet was claimed to have been published by Arya Nandan Singh and Muneshwar Singh who had in the opening part of the said leaflet described themselves as Ex-members of the P. S. P. The objectionable portion of this leaflet is also to the effect that Smt. Krishna Kumari had sought the Congress ticket and had given a pledge and when the ticket in question was not given to her then she became a P. S. P. candidate and that this was an opportunism. I have already discussed in connection with the leaflet Ex. 1 that the said allegation was not a false statement of fact and that it had not been proved that the respondents or their agents or any other person either believed the same to be false or did not believe the same to be true in relation to the personal character or conduct of Smt. Krishna Kumari or in relation to her candidature. Thus there is no need to further enter into any discussion with regard to this leaflet as it also does not make out any corrupt practice.

From the aforesaid discussion follows that the petitioner has failed to prove the issues 3 and 4 which are consequently decided against the petitioner.

After having decided the issues nos. 3 and 4 above against the petitioner and pursuant to the discussion which has been made above elaborately the issues Nos. 5 and 6 are also decided against the petitioner.

Issue No. 34.—Having decided all the issues referred to earlier against the petitioner the net result would be that she is not entitled to any remedy whatsoever against the respondents in question. The issue No. 34 too is consequently decided against her.

Pursuant to the aforesaid discussion there is no force in the election petition in question.

ORDER

The election petition is dismissed with costs. Each of the respondents 1 and 2 shall get Rs. 250/- as costs. The respondent No. 3 shall not get any cost. After paying the aforesaid sum of Rs. 500/- as costs to the respondents Nos. 1 and 2 as above the remaining amount of security deposited by the petitioner shall be refunded to her.

K. C. PURI, Member, Election Tribunal
Unnao

28th August, 1958.

Judgement is signed dated and pronounced in open court.

K. C. PURI, Member, Election Tribunal
Unnao

28th August, 1958

[No. 82/477/57/2419.]

By order
DIN DAYAL, Under Secy.

